

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MARLENE HOPKINS, Individually, as )  
Wrongful Death Heir, and as Successor-in- )  
Interest to NORMAN HOPKINS, JR., )  
Deceased; and MICHELLE HOPKINS, and )  
MICHAEL HOPKINS, as Legal Heirs of )  
NORMAN HOPKINS, Deceased, THE )  
FLINTKOTE COMPANY, THE OFFICIAL )  
COMMITTEE OF THE ASBESTOS )  
PERSONAL INJURY CLAIMANTS, and )  
JAMES J. MCMONAGLE as the LEGAL )  
REPRESENTATIVE FOR FUTURE )  
ASBESTOS PERSONAL INJURY )  
CLAIMANTS )

Plaintiffs,

vs.

PLANT INSULATION COMPANY; )  
UNIROYAL HOLDING, INC.; IMPERIAL )  
TOBACCO CANADA LIMITED; )  
SULLIVAN & CROMWELL LLP; and )  
DOES 1 through 100, )

Defendants.

Civil Action No. \_\_\_\_\_

**EMERGENCY PETITION OF IMPERIAL TOBACCO CANADA LIMITED FOR AN  
ORDER OF TRANSFER PURSUANT TO 28 U.S.C. § 157(B)(5)**

Imperial Tobacco Canada Limited ("ITCAN")<sup>1</sup> files this Petition pursuant to 28 U.S.C. § 157(b)(5) and requests that the Court enter an Order transferring to this Court a civil action currently pending before the United States District Court for the Northern District of California. In support of this Petition, ITCAN respectfully shows the Court as follows:

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<sup>1</sup> By filing this Petition, ITCAN does not, and has not agreed to, accept or attorn to the jurisdiction of any court within the United States. ITCAN reserves any and all of its rights in the underlying litigation, including the

1. On May 1, 2004, The Flintkote Company ("Flintkote") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Flintkote's bankruptcy case is pending before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") with the case number 04-11300 (JKF) (the "Bankruptcy Case").

2. On April 5, 2006, Flintkote, together with Marlene Hopkins, Michelle Hopkins, and Michael Hopkins (collectively, the "Asbestos Claimants") filed a complaint (the "Complaint") in Superior Court of California (Unlimited Jurisdiction) for the County of San Francisco to initiate a lawsuit (the "Pending Action") against ITCAN and additional defendants, Plant Insulation Company, Uniroyal Holding, Inc., Sullivan & Cromwell LLP, and Does 1 Through 100. On or about April 27, 2006, Flintkote and the Asbestos Claimants filed an amended complaint (the "Amended Complaint") in the Pending Action to add as plaintiffs the Official Committee of the Asbestos Personal Injury Claimants and James J. McMonagle, the Legal Representative For Future Asbestos Personal Injury Claimants (collectively, and together with Flintkote and the Asbestos Claimants, the "Plaintiffs"). Complete copies of all process, pleadings, and orders served on ITCAN in the Pending Action are attached hereto as Exhibit B.

3. In the Pending Action, the Asbestos Claimants seek recovery for, among other things, wrongful death and loss of consortium resulting from the death of Norman Hopkins (the "Decedent") whose death was allegedly caused by exposure to asbestos. The Asbestos Claimants seek recovery against ITCAN on the theory that ITCAN is the alter ego of Flintkote and is, therefore, liable for asbestos claims against Flintkote. Flintkote also asserts, among other things, claims against ITCAN for a declaration of alter ego liability and recovery of alleged fraudulent transfers.

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right to contest personal jurisdiction over ITCAN in the appropriate forum.

4. On the date hereof, ITCAN removed the Pending Action to the United States District Court for the Northern District of California (the "California District Court") by filing a Notice of Removal pursuant to 28 U.S.C. § 1441 and, in the alternative, 28 U.S.C. § 1452. Together with the Notice of Removal, ITCAN filed a motion with the California District Court to transfer the Pending Action to this Court pursuant to 28 U.S.C. § 1404. In connection therewith, ITCAN requested that the California District Court stay any consideration of transfer and/or remand issues until this Court has an opportunity to consider this Petition.

5. ITCAN files this Petition pursuant to 28 U.S.C. § 157(b)(5). That statute provides as follows:

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending or in the district court in the district in which the claim arose, *as determined by the district court in which the bankruptcy case is pending.*

28 U.S.C. § 157(b)(5) (emphasis added).

6. In the Pending Action, the Asbestos Claimants assert claims for, among other things, wrongful death and loss of consortium resulting from the Decedent's alleged exposure to asbestos. The Asbestos Claimants seek to recover against ITCAN on the theory that ITCAN is the alter ego of Flintkote. In other words, for the Asbestos Claimants to prevail in their action against ITCAN, they must first establish the validity of their tort claims against Flintkote. As such, the first three counts in the Pending Action are in fact personal injury tort claims against Flintkote and ITCAN (as Flintkote's alleged alter ego). Likewise, Flintkote's alter ego claims also are based on Flintkote's liability on asbestos tort claims. Accordingly, the Pending Action falls within the purview of section 157(b)(5). Therefore, this Court is the only court with authority to determine whether the Pending Action should be tried in this Court or in the district in which the claim arose.

7. Moreover, this Court has jurisdiction over the pending action pursuant to 28 U.S.C. § 1334. Under 28 U.S.C. § 1334, this Court has jurisdiction over cases arising under the Bankruptcy Code or cases related to a pending bankruptcy case. The Pending Action arises under the Bankruptcy Code because Flintkote's standing to pursue the causes of action asserted against ITCAN is founded upon section 544 of the Bankruptcy Code which permits Flintkote, as a debtor-in-possession in a pending Chapter 11 case, to assert certain claims on behalf of its creditors and to avoid and recover certain prepetition transfers of property. In addition, any recovery in the Pending Action will have a direct effect on the Bankruptcy Case by providing funds for distribution to creditors. Indeed, Flintkote has stated that the Pending Action "represents potentially the largest group of assets" of its bankruptcy estate. Thus, the claims that Flintkote asserts in the Pending Action arise under the Bankruptcy Code and are related to the Bankruptcy Case. Accordingly, this Court has jurisdiction over the Pending Action pursuant to 28 U.S.C. § 1334.

8. Together with the filing of this Petition, ITCAN has filed a Brief in support hereof.

WHEREFORE, for the reasons set forth herein and in the accompanying Brief, ITCAN respectfully requests that this Court:

(a) enter an interim order on an emergency basis in the form attached hereto as Exhibit A transferring the Pending Action to this Court on a provisional basis pursuant to 28 U.S.C. § 157(b)(5);

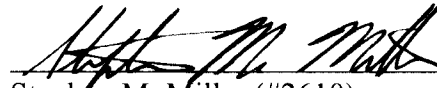
(b) stay all other proceedings related to the Pending Action that may be pending before any other court until such time as this Court has an opportunity to make a final ruling on this Petition; and,

(c) enter a final order transferring the Pending Action to this Court pursuant 28 U.S.C. § 157(b)(5).

This 5<sup>th</sup> day of May, 2006.

Respectfully submitted,

MORRIS, JAMES, HITCHENS & WILLIAMS  
LLP



Stephen M. Miller (#2610)  
Brett D. Fallon (#2480)  
222 Delaware Avenue, 10<sup>th</sup> Floor  
Post Office Box 2306  
Wilmington, Delaware 19899-2306  
Telephone: (302) 888-6800  
Telecopier: (302) 571-1750  
E-mail: smiller@morrisjames.com  
bfallon@morrisjames.com

and

KING & SPALDING LLP  
L. Joseph Loveland  
James A. Pardo, Jr.  
Mark M. Maloney  
1180 Peachtree Street, N.E.  
Atlanta, Georgia 30309  
Phone: 404-572-4600  
Fax: 404-572-5141  
jpardo@kslaw.com  
jloveland@kslaw.com  
mmaloney@kslaw.com

Attorneys for Defendant Imperial Tobacco Canada  
Limited

# EXHIBIT A

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MARLENE HOPKINS, Individually, as  
Wrongful Death Heir, and as Successor-in-  
Interest to NORMAN HOPKINS, JR.,  
Deceased; and MICHELLE HOPKINS, and  
MICHAEL HOPKINS, as Legal Heirs of  
NORMAN HOPKINS, Deceased, and THE  
FLINTKOTE COMPANY,

Plaintiffs,

vs.

PLANT INSULATION COMPANY;  
UNIROYAL HOLDING, INC.; IMPERIAL  
TOBACCO CANADA LIMITED;  
SULLIVAN & CROMWELL LLP; and  
DOES 1 through 100,

Defendants.

Case No. \_\_\_\_\_

**PROVISIONAL ORDER REGARDING EMERGENCY PETITION OF IMPERIAL  
TOBACCO CANADA LIMITED FOR AN ORDER OF TRANSFER  
PURSUANT TO 28 U.S.C. § 157(B)(5)**

This matter having come before the Court on the Emergency Petition of Imperial Tobacco Canada Limited (“ITCAN”) for an order of transfer pursuant to 28 U.S.C. § 157(b)(5) (the “Petition”); the Court having reviewed the Petition, and adequate and sufficient notice of the Petition having been given under the circumstances; and it appearing that the relief requested is warranted under 28 U.S.C. § 157(b)(5) and is in the best interests of the parties; it is hereby

ORDERED, that the Petition is granted on a provisional basis as set forth herein; and it is further

ORDERED, that the civil action styled MARLENE HOPKINS, Individually, as

Wrongful Death Heir, and as Successor-in-Interest to NORMAN HOPKINS, JR., Deceased; and  
MICHELLE HOPKINS, and MICHAEL HOPKINS, as Legal Heirs of NORMAN HOPKINS,  
Deceased, THE FLINTKOTE COMPANY THE OFFICIAL COMMITTEE OF THE  
ASBESTOS PERSONAL INJURY CLAIMANTS, JAMES J. MCMONAGLE as the LEGAL  
REPRESENTATIVE FOR FUTURE ASBESTOS PERSONAL INJURY CLAIMANTS v.  
PLANT INSULATION COMPANY; UNIROYAL HOLDING, INC.; IMPERIAL TOBACCO  
CANADA LIMITED; SULLIVAN & CROMWELL LLP; and DOES 1 through 100, originally  
filed in the Superior Court of California (Unlimited Jurisdiction) for the County of San Francisco  
Civil Action No. with case no. 06-450944 (the "Pending Action") shall be transferred to this  
Court on a provisional basis pending this Court's final determination of the appropriate venue for  
the Pending Action pursuant to 28 U.S.C. § 157(b)(5); and it is further

ORDERED, that all other proceedings related to the Pending Action that are currently  
pending before any other court shall be stayed pending further order of this Court.

Dated: May \_\_\_, 2006

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United States District Court Judge



**Exhibit B****Superior Court of California, County of San Francisco****Case No. 06-450944 Docket**

<b>Exhibit B-1</b>	April 5, 2006	OTHER NON EXEMPT COMPLAINTS, COMPLAINT FILED BY PLAINTIFF HOPKINS, MARLENE , INDIVIDUALLY, AS WRONGFUL DEATH HEIR, AND AS SUCCESSOR-IN-INTEREST TO NORMAN HOPKINS, JR., DECEASED HOPKINS, MICHELLE , AS LEGAL HEIR OF NORMAN HOPKINS, DECEASED HOPKINS, MICHAEL , AS LEGAL HEIR OF NORMAN HOPKINS THE FLINTKOTE COMPANY AS TO DEFENDANT PLANT INSULATION COMPANY UNIROYAL HOLDING, INC. IMPERIAL TOBACCO CANADA LIMITED SULLIVAN & CROMWELL LLP DOES 1-100 SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR SEP-08-2006 PROOF OF SERVICE DUE ON JUN-05-2006 CASE MANAGEMENT STATEMENT DUE ON AUG-24-2006 COMPLEX LITIGATION ASSIGNMENT REQUESTED BY FILING PARTIES; FEE INCLUDED IN FILING FEE
<b>Exhibit B-2</b>	April 5, 2006	NOTICE TO PLAINTIFF
<b>Exhibit B-3</b>	April 10, 2006	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF HOPKINS, MARLENE , INDIVIDUALLY, AS WRONGFUL DEATH HEIR, AND AS SUCCESSOR-IN-INTEREST TO NORMAN HOPKINS, JR., DECEASED HOPKINS, MICHELLE , AS LEGAL HEIR OF NORMAN HOPKINS, DECEASED HOPKINS, MICHAEL , AS LEGAL HEIR OF NORMAN HOPKINS THE FLINTKOTE COMPANY SERVED APR-07-2006, SUBSTITUTE SERVICE ON NATURAL PERSON, ON DEFENDANT SULLIVAN & CROMWELL LLP
<b>Exhibit B-4</b>	April 14, 2006	APPLICATION FOR APPROVAL OF COMPLEX LITIGATION DESIGNATION FILED BY PLAINTIFF HOPKINS, MARLENE , INDIVIDUALLY, AS WRONGFUL DEATH HEIR, AND AS SUCCESSOR-IN-INTEREST TO NORMAN HOPKINS, JR., DECEASED HOPKINS, MICHELLE , AS LEGAL HEIR OF NORMAN HOPKINS, DECEASED HOPKINS, MICHAEL , AS LEGAL HEIR OF NORMAN HOPKINS THE FLINTKOTE COMPANY
<b>Exhibit B-5</b>	April 20, 2006	PROOF OF PERSONAL SERVICE (APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION) PARTY SERVED: IMPERIAL TOBACCO CANADA LIMITED FILED BY PETITIONER THE FLINTKOTE COMPANY
<b>Exhibit B-6</b>	April 20, 2006	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF THE FLINTKOTE COMPANY SERVED APR-07-2006, PERSONAL SERVICE, ON DEFENDANT IMPERIAL TOBACCO CANADA LIMITED
<b>Exhibit B-7</b>	April 20, 2006	PROOF OF HAND DELIVERY (APPLICATION FOR DESIGNATION OF COMPLEX LIT) FILED BY PLAINTIFF THE FLINTKOTE COMPANY AS TO DEFENDANT SULLIVAN & CROMWELL LLP

<b>Exhibit B-8</b>	April 27, 2006	1ST AMENDED COMPLAINT FILED BY PLAINTIFF HOPKINS, MARLENE , INDIVIDUALLY, AS WRONGFUL DEATH HEIR, AND AS SUCCESSOR-IN-INTEREST TO NORMAN HOPKINS, JR., DECEASED HOPKINS, MICHELLE , AS LEGAL HEIR OF NORMAN HOPKINS, DECEASED HOPKINS, MICHAEL , AS LEGAL HEIR OF NORMAN HOPKINS THE FLINTKOTE COMPANY THE OFFICIAL COMMITTEE OF THE ASBESTOS PERSONAL INJURY CLAIMANTS MCMONAGLE, JAMES AS THE LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS PERSONAL INJURY CLAIMANTS AS TO DEFENDANT PLANT INSULATION COMPANY UNIROYAL HOLDING, INC. IMPERIAL TOBACCO CANADA LIMITED SULLIVAN & CROMWELL LLP DOES 1-100
<b>Exhibit B-9</b>	May 2, 2006	PROOF OF HAND DELIVERY AMENDED COMPLAINT FILED BY PLAINTIFF HOPKINS, MARLENE , INDIVIDUALLY, AS WRONGFUL DEATH HEIR, AND AS SUCCESSOR-IN-INTEREST TO NORMAN HOPKINS, JR., DECEASED HOPKINS, MICHELLE , AS LEGAL HEIR OF NORMAN HOPKINS, DECEASED HOPKINS, MICHAEL , AS LEGAL HEIR OF NORMAN HOPKINS THE FLINTKOTE COMPANY THE OFFICIAL COMMITTEE OF THE ASBESTOS PERSONAL INJURY CLAIMANTS MCMONAGLE, JAMES AS THE LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS PERSONAL INJURY CLAIMANTS
<b>Exhibit B-10</b>	May 4, 2006	DEFENDANT IMPERIAL TOBACCO CANADA LIMITED'S ANSWER TO FIRST AMENDED COMPLAINT FOR DAMAGES AND RELIEF AGAINST ALTER EGO, FOR RECOVERY OF DIVIDENDS, FOR RECOVERY OF FRAUDULENT TRANSFERS, FOR DAMAGES BY REASON OF BREACH OF FIDUCIARY DUTY, FOR DAMAGES FOR BREACH OF DUTY AND NEGLIGENCE, TO ENFORCE CONSTRUCTIVE TRUST, FOR RESTITUTION, AND FOR DECLARATORY RELIEF

**Exhibit B-1**

# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

PLANT INSULATION COMPANY; UNIROYAL HOLDING, INC.; IMPERIAL TOBACCO CANADA LIMITED; SULLIVAN & CROMWELL LLP; and DOES 1 through 100.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARLENE HOPKINS, Individually, as Wrongful Death Heir, and as Successor-in-Interest to NORMAN HOPKINS, JR., Deceased; and MICHELLE HOPKINS, and MICHAEL HOPKINS, as Legal Heirs of NORMAN HOPKINS, Deceased, and THE FLINTKOTE COMPANY,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
San Francisco County Superior Court  
400 McAllister Street

CASE NUMBER:

(Número del Caso):

SSC 06450944

San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean L. Bertrand (CSB 083250)

415.901.8700

415.901.8701

MORGENSTEIN &amp; JUBELIRER LLP

One Market, Spear Street Tower, 32nd Floor

San Francisco, CA 94105

DATE:

(Fecha)

APR 05 2006

Gordon Park II

Clerk, by

Jun Paneio

Deputy

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person).  
☐ other (specify):

4. ☐ by personal delivery on (date):

[SEAL]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jean L. Bertrand (CSB 083250) Eliot S. Jubelirer (CSB 061654) MORGENSTEIN & JUBELIRER LLP One Market, Spear Street Tower, 32nd Floor San Francisco, CA 94105 TELEPHONE NO.: 415.901.8700 FAX NO.: 415.901.8701		CM-010  FOR COURT USE ONLY  <b>ENDORSED FILED</b> San Francisco County Superior Court  APR 05 2006  GORDON PARK-LI, Clerk BY: JUN R. PANELO Deputy Clerk
ATTORNEY FOR (Name): Plaintiff MARLENE HOPKINS, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
CASE NAME: MARLENE HOPKINS, et al. v. PLANT INSULATION COMPANY, et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	
CASE NUMBER: <b>0606450944</b> JUDGE: DEPT:		

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) <b>Non-P/PI/D/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-P/PI/D/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Type of remedies sought (check all that apply):
- |   |  |                                      |
|---|--|--------------------------------------|
| a. <input checked="" type="checkbox"/> monetary | b. <input checked="" type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input type="checkbox"/> punitive |
|---|--|--------------------------------------|
4. Number of causes of action (specify): 16
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-016).

Date: April 5, 2006

Jean L. Bertrand (CSB 083250)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ENDORSED  
FILED  
San Francisco County Superior Court

APR 05 2006

GORDON PARK-LI, Clerk  
BY: JUN P. PANELO  
Deputy Clerk

1 ALAN R. BRAYTON (State Bar No. 073685)  
2 GILBERT L. PURCELL (State Bar No. 113603)  
3 DAVID R. DONADIO (State Bar No. 154436)  
4 BRAYTON PURCELL, LLP  
222 Rush Landing Road  
P.O. Box 6169  
Novato, CA 94948-6169  
Telephone (415) 898-1555

5 Attorneys for Plaintiffs  
6 Marlene Hopkins, Michelle Hopkins, and Michael Hopkins

7 STEPHEN M. SNYDER (State Bar No. 054598)  
8 JAMES L. MILLER (State Bar No. 071958)  
9 SNYDER MILLER & ORTON LLP  
111 Sutter Street, Suite 1950  
San Francisco, CA 94104  
Telephone: (415) 962-4400  
Facsimile: (415) 962-4401

CASE MANAGEMENT CONFERENCE SET

SEP 08 2006 - 9 00 AM

DEPARTMENT 212

10 Attorneys for Plaintiff  
11 The Flintkote Company  
12 (Additional Counsel Listed On Signature Page)

13  
14 SUPERIOR COURT OF CALIFORNIA (UNLIMITED JURISDICTION)  
15 COUNTY OF SAN FRANCISCO  
16

17 MARLENE HOPKINS, Individually, as  
18 Wrongful Death Heir, and as Successor-in-  
19 Interest to NORMAN HOPKINS, JR.,  
20 Deceased; and MICHELLE HOPKINS, and  
MICHAEL HOPKINS, as Legal Heirs of  
NORMAN HOPKINS, Deceased, and THE  
FLINTKOTE COMPANY,

21 Plaintiffs,

22 vs.

23 PLANT INSULATION COMPANY;  
24 UNIROYAL HOLDING, INC.; IMPERIAL  
25 TOBACCO CANADA LIMITED;  
26 SULLIVAN & CROMWELL LLP; and  
DOES 1 through 100,

27 Defendants.  
28

Case No.

06C06450944

COMPLAINT FOR DAMAGES AND  
RELIEF AGAINST ALTER-EGO, FOR  
RECOVERY OF DIVIDENDS, FOR  
RECOVERY OF FRAUDULENT  
TRANSFERS, FOR DAMAGES BY REASON  
OF BREACH OF FIDUCIARY DUTY, FOR  
DAMAGES FOR BREACH OF DUTY AND  
NEGLIGENCE, TO ENFORCE  
CONSTRUCTIVE TRUST, FOR  
RESTITUTION, AND FOR DECLARATORY  
RELIEF.

Snyder  
Miller  
& Orion  
LLP

1  
COMPLAINT

**PARTIES, JURISDICTION AND VENUE**

5. Defendant Imperial Tobacco Canada Limited ("Imperial Tobacco") is the major Canadian tobacco company. It is a Canadian corporation formerly known as Imasco Limited and will be referred to herein as "Imperial Tobacco" or "Imasco." Imperial Tobacco has manufactured



1 cigarettes and other tobacco products in Canada for many years. Its brands include "Players" and "du  
2 Maurier" cigarettes. Imperial Tobacco has sold and distributed its products in the United States,  
3 including California, for many years.

4 6. Defendant Sullivan & Cromwell LLP ("S&C") is a partnership and a law firm. S&C  
5 maintains offices in California, among other places. S&C is a citizen of California, in that there are  
6 S&C partners who reside in and are citizens of California.

7 7. Plaintiffs are ignorant of the true names and capacities of defendants sued under the  
8 fictitious names Doe 1 through Doe 100, inclusive, and pray that when they are discovered the  
9 complaint may be amended to allege such names and capacities. Each of the fictitiously named  
10 defendants is responsible in some manner for the occurrences alleged hereafter.

11 8. Jurisdiction in the Superior Court as a case of unlimited jurisdiction is proper because  
12 the monetary causes of action all arise under state law, the demand exceeds \$25,000, and the action  
13 seeks in part declaratory relief under California Code of Civil Procedure section 1060. Flintkote is  
14 authorized by virtue of the Bankruptcy Code to bring certain of the causes of action, all of which  
15 arise under state law.

16 9. Venue in the County of San Francisco is proper because defendants Imperial Tobacco  
17 and S&C have no residence in California and can be sued in any county in California, and their  
18 liability arises from conduct that occurred in San Francisco, and because defendant Plant has its  
19 principal place of business situated in San Francisco.

20 10. Plaintiffs Hopkins have the right to assert an alter ego claim against Imperial Tobacco  
21 directly, and/or by reason of the abandonment and/or transfer by Flintkote to Hopkins of the right, to  
22 the extent of losses held by them. The alter ego claims by Hopkins and Flintkote depend upon the  
23 same set of facts. Pursuing such claims against a substantial well-financed defendant is difficult and  
24 expensive, so that it is economically not practical for a single individual to pursue them alone.  
25 Accordingly, Flintkote and plaintiffs Hopkins have agreed to bring the alter ego claims together as  
26 plaintiffs and to cooperate in prosecuting them. Plaintiffs Hopkins make no claim against S&C.

#### 27 **FACTS**

28 11. Flintkote manufactured and sold asbestos containing products for many years,

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1 including vinyl asbestos floor tile, asbestos cement pipe and many other products. Flintkote, through  
 2 its wholly owned subsidiary Flinkote Mines, Inc. mined asbestos in Quebec, Canada from 1946  
 3 through approximately 1970. Beginning in or about 1972, Flintkote, along with many other  
 4 companies began to be named as a defendant in numerous lawsuits brought by persons exposed to  
 5 asbestos contained in its products who suffered from a variety of asbestos induced diseases. The  
 6 number of asbestos cases filed against Flintkote and the other companies increased over time.

7 12. In August 1982 Johns Manville Corporation and twenty of its subsidiaries and  
 8 affiliates filed for bankruptcy and claimed they were forced into bankruptcy by the asbestos claims  
 9 filed against it. The bankruptcy filing was major news as Johns Manville was, absent the asbestos  
 10 litigation, a large and profitable American company. Other companies named as defendants in the  
 11 asbestos litigation were also forced into bankruptcy as a result of the litigation, including:

<u>Company</u>	<u>Date of Filing Bankruptcy</u>
UNR Industries	July 19, 1982
Amatex Corporation	November 1, 1982
Forty-Eight Insulations, Inc.	April 19, 1985
Standard Insulation	August 4, 1986
Nicolet	July 17, 1987

15 13. A number of defendants regularly sued in the asbestos litigation banded together in the  
 16 early 1980's and sought to settle disputes with their insurers where possible and establish a facility  
 17 that would provide an efficient joint defense to members of the group. The discussions were  
 18 mediated by Dean Harry Wellington of the Yale Law School. The participants became known as the  
 19 "Wellington Group." By June 1985 they had signed an agreement and had begun to operate as the  
 20 Asbestos Claims Facility ("ACF").

21 14. Flintkote was a member of the ACF and, for a while, asbestos cases against it were  
 22 defended and settled or tried by lawyers selected by the Asbestos Claims Facility. The ACF defense  
 23 arrangements were initially advantageous to Flintkote as they allowed the company to defend  
 24 asbestos personal injury cases at shared cost and thus allowed it to conserve insurance resources that  
 25 would be more quickly consumed if it was required to defend cases on its own. The ACF operated  
 26 through late 1988, at which point it dissolved as a result of disagreements among its members, e.g., as  
 27 to appropriate defense strategies and as to how costs should be allocated among participants.  
 28

1           15. Tobacco companies whose cigarettes were implicated in the rising tide of asbestos-  
 2 related disease, such as Imasco and its counsel S&C, by 1986 knew or had ready access to  
 3 information which pointed to the threatening scope of the asbestos litigation to follow. That  
 4 information included:

- 5           • The aforementioned bankruptcies of Johns-Manville Corporation and other asbestos  
 6 defendants, which increased the payment shares in the tort system of the surviving  
 7 companies;
- 8           • Numbers of claims filings were increasing and claims values were increasing;
- 9           • Diseases caused by asbestos exposure could have a latency period of decades, which  
 10 meant liabilities would extend far into the future;
- 11          • Commercial usage of asbestos in the United States continued to increase through the  
 12 1970's, with significant implications for future morbidity;
- 13          • Inability to extend the asbestos litigation to include significant responsible parties,  
 14 such as the United States Government and the tobacco companies, all of whom had  
 15 contributed to the diseases and injuries of asbestos victims;
- 16          • Unmistakable signals from casualty insurers that they could not be counted on by  
 17 defendant companies in the face of ever-increasing demands, with signs from some  
 18 that they would not survive. By mid-1987, two of Flintkote's insurers had become  
 19 insolvent, and not until the late 1980's and into the early 1990's did Flintkote reach  
 20 agreements as to coverage with only 60% of its insurers;
- 21          • Substantial disagreements among ACF members that weakened the effectiveness of  
 22 the ACF and hastened its demise. These disagreements were apparent as early as  
 23 1986. There were clear indicators that members were going to leave the ACF, and  
 24 seven did so in 1987. Persons knowledgeable about the operations and functioning of  
 25 the ACF, such as Imasco and S&C, knew or should have known in 1986 that the ACF  
 26 would not continue to operate indefinitely as originally agreed upon and also knew or  
 27 should have known that disintegration of the ACF was likely in the foreseeable future.

28          16. Imasco was quite familiar with the American asbestos litigation. It followed and

1 monitored that litigation for a variety of reasons, including that it knew there was a synergistic or  
2 combinative effect which produced increased disease rates in persons who smoked its tobacco  
3 products and who were also exposed to asbestos. Consequently Imasco understood that the litigation  
4 posed risks to corporate and insurer solvency.

5 17. In the 1980s, Imasco was engaged in a program of corporate diversification.  
6 Specifically, it was seeking to acquire non-tobacco businesses. One target of Imasco's diversification  
7 program in 1986 was a Canadian financial business Canada Trustco Mortgage Company ("Canada  
8 Trustco"). But, Canada Trustco had been acquired by another Canadian company, Genstar  
9 Corporation. So, in order to get control of Canada Trustco, Imasco, operating through a corporate  
10 subsidiary, Imasco Enterprises, Inc. ("IEI"), commenced a hostile purchase of all shares of Genstar  
11 Corporation ("Genstar"). At the time Genstar had a number of businesses and subsidiary  
12 corporations, including several in the United States. Genstar was Flintkote's ultimate parent  
13 company, with a number of wholly owned subsidiary companies between Genstar and Flintkote.  
14 Imasco's stated objective in the purchase was to acquire Genstar's 98.9% holding of Canada Trustco  
15 common shares.

16 18. From the outset, Imasco's strategy was to use the value of Genstar's assets, other than  
17 Canada Trustco, to finance the purchase of Canada Trustco. The strategy therefore involved  
18 restructuring and selling off most of Genstar's assets except Canada Trustco, so as to acquire Canada  
19 Trustco at an attractive price, using the liquidation of Genstar's assets, including Flintkote, to pay for  
20 the hostile takeover.

21 19. Imasco acquired Genstar in August 1986. Then, as it had planned to do, it set about  
22 selling most of Genstar's assets and businesses (other than Canada Trustco). To implement this  
23 scheme, Imasco dominated and controlled Flintkote and caused it to do its bidding. First it required  
24 Flintkote to isolate its asbestos liabilities from its major assets by creating four subsidiaries and then  
25 transferring Flintkote's valuable operating assets to them. Then, Imasco caused Flintkote to sell each  
26 of the subsidiaries to which Flintkote assets had been transferred; as well as two subsidiaries that had  
27 been created previously. Those sales were made to third parties for cash.

28 20. Gross proceeds from the sales of the Flintkote assets were approximately

1 \$663,500,000 U.S., plus \$100,000,000 Canadian. The sales were completed by February 27, 1987.  
2 These asset transfers and sales were overseen by Imasco personnel working in San Francisco,  
3 California. Imasco assigned S&C to provide legal advice to Flintkote in order to implement the  
4 planned liquidation and sale of the Flintkote assets. At Imasco's direction, S&C began representing  
5 Flintkote and gave it legal advice in connection with the asset liquidation. S&C continued to  
6 represent its original client Imasco in connection with the liquidation throughout the process and  
7 thereafter. Flintkote did not give informed written consent to S&C representing both Flintkote and  
8 Imasco.

9 21. After these transactions, Flintkote's valuable operating businesses were gone. Their  
10 profits, cash flow, and credit were no longer available to pay the asbestos claims against Flintkote.  
11 Instead, Flintkote was left with only cash from the forced sales of its assets, together with insurance,  
12 much of which was contested by the insurers who had written the policies. The cash and insurance  
13 were all that Flintkote had with which to pay settlements and judgments in the asbestos litigation.  
14 However, the final step in Imasco's scheme to use Genstar's assets to pay for its acquisition of  
15 Canada Trustco was to transfer most of Flintkote's cash to Imasco, thereby reimbursing it for monies  
16 it expended in the hostile takeover of Genstar. Imasco decided to transfer the cash out of Flintkote  
17 and to itself (through subsidiary corporations which it owned, controlled, and dominated) by cash  
18 dividends to be paid out by Flintkote.

19 22. The first transfer was accomplished through a dividend of \$170,200,000 declared in  
20 San Francisco, California, by Flintkote's board of directors on December 19, 1986. The dividend  
21 was to be paid on December 30, 1986. The money went to Imasco, the sole ultimate parent  
22 corporation of Flintkote.

23 23. At the time of the December 1986 dividend, S&C were and had been outside counsel  
24 to Imasco, which ultimately would receive the dividend, and represented Imasco in connection with  
25 the acquisition of Genstar and the liquidation of Flintkote. At the same time, S&C represented  
26 Flintkote in connection with the liquidation of its assets and in connection with the cash dividends  
27 that Imasco desired to receive from Flintkote. In connection with the 1986 dividend, S&C advised  
28 Flintkote that S&C had retained consultants to report on Flintkote's potential asbestos liabilities. It

1 advised the Flintkote board that it had received preliminary advice from the consultant, and that there  
2 was a draft of the consultant's report. S&C advised the board that it could reasonably go forward and  
3 declare the dividend. S&C told the board that it did not believe the consultant's final report would  
4 alter its conclusions. S&C concurred in a presentation by Flintkote's general counsel regarding  
5 Flintkote's current and potential liabilities. The Flintkote directors in 1986 and 1987 were not  
6 knowledgeable about the asbestos litigation and relied upon S&C and its consultants for advice about  
7 it. The board minutes do not reflect any benefit to Flintkote or its creditors as a result of the proposed  
8 dividend transaction. Imasco paid the consultants for their services, but the board minutes do not  
9 show that the board was informed of that fact.

10 24. Stating that it was doing so in accordance with previous undertakings and "as an  
11 inducement" to each of Flintkote's officers and directors "to continue to fulfill his responsibilities" as  
12 such, Imasco had issued a letter on December 18, 1986, undertaking to indemnify and hold each of  
13 them harmless against any and all actions, suits or claims arising out of their actions, omissions or  
14 conduct as officers or directors of Flintkote at any time since Imasco acquired control of Genstar.

15 25. Imasco and S&C participated by telephone at the December 19, 1986, Flintkote board  
16 meeting and said to Flintkote that it would undertake to restore any dividends to Flintkote if a court  
17 determined them to be improperly declared. On December 18, 1986, Imasco sent a letter confirming  
18 that in addition to the December 18, 1986, indemnity letter, Imasco would enter into an undertaking  
19 to replace funds to Flintkote to the extent required by an appropriate judicial body.

20 26. S&C's legal advice and Imasco's domination and control over Flintkote caused the  
21 dividend to be paid.

22 27. The second transfer of money from Flintkote, ultimately to Imasco, was by dividend  
23 of \$355,000,000 declared by Flintkote at a board meeting at San Francisco, California, on July 22,  
24 1987. It was to be paid on August 31, 1987 or before. The money went to Imasco through subsidiary  
25 corporations and entities that it controlled and dominated.

26 28. At the time of the July 1987 dividend, S&C were still outside legal counsel to Imasco  
27 and were representing Imasco, including with respect to Flintkote-related issues, such as the  
28 consequences and potential liabilities attached to receipt of cash via dividend from Flintkote in the

1 face of Flintkote's asbestos liabilities. At the same time, S&C was representing Flintkote on those  
2 same issues, and on the issue of the director's liability in connection with declaring dividends to  
3 Imasco in the face of Flintkote's asbestos liabilities. On July 22, 1987, S&C as well as Imasco were  
4 present by telephone at the Flintkote board meeting in San Francisco. S&C had prepared a legal  
5 memorandum addressed to Flintkote. During the meeting, the memorandum was presented to the  
6 board, as was an overview of a study by Resource Planning Corporation ("RPC"), the consultant  
7 S&C had retained and whose preliminary report was used by S&C in connection with the December  
8 1986 board meeting.

9 29. The board minutes of the July 1987 meeting reflect that after payment of the  
10 dividends, Flintkote would have left retained earnings and paid-in capital of approximately  
11 \$80,000,000, but the estimated potential exposure from environmental cleanup was not to exceed  
12 \$20,000,000, and the estimated potential asbestos property damage (not personal injury) exposure  
13 taken from the RPC study was \$42,000,000.

14 30. In the July 22, 1987 board meeting, the board members were told that Imasco would  
15 undertake to restore dividend monies to the extent the declared dividends were deemed legally  
16 improper and necessary to satisfy unpaid judgment creditors of Flintkote. Imasco promised to supply  
17 a writing memorializing the understanding. After the meeting, Imasco issued a letter dated July 27,  
18 1987 to Flintkote undertaking to repay to Flintkote any amounts (up to the full amount of dividends  
19 declared while Imasco was an indirect owner of Flintkote) finally determined by a court of competent  
20 jurisdiction to be due to Flintkote creditors but that cannot be satisfied out of Flintkote's assets  
21 because of dividends finally determined to have been improperly paid during Imasco's indirect  
22 ownership of Flintkote. A copy of the July 27, 1987 letter ("Dividend Repayment Contract") is  
23 attached as Exhibit A and incorporated by reference.

24 31. The S&C legal memorandum and the RPC study, both supplied by Imasco's and  
25 Flintkote's lawyers S&C, and Imasco's domination and control over Flintkote, caused the dividend to  
26 be paid, as was Imasco's plan from the time it took over Genstar.

27 32. S&C's relationship with Imasco supplied reason to structure S&C's advice so as to  
28 ensure that Flintkote would pay the dividends. The S&C memorandum contained substantial errors,

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1 omissions, and misleading statements, all of which tilted the conclusions in the memorandum in favor  
2 of Flinkote's payment of these dividends, including the following.

3 33. The S&C memorandum is dated June 25, 1987, and addressed to Flinkote. However,  
4 it actually spoke to Flinkote's directors as it is focused on whether the directors of Flinkote could  
5 declare the dividend yet escape personal liability for doing so. The memorandum is vague and  
6 indefinite as to Flinkote's obligations as a corporation.

7 34. The S&C memorandum contains legal analysis, including discussion of California  
8 law. In that connection, S&C advised Flinkote that California had adopted the Uniform Fraudulent  
9 Conveyance Act. S&C wrote that a conveyance could be set aside if the debtor would be rendered  
10 insolvent by the transfer, and that insolvency is defined in terms of a person's probable liability on  
11 existing debts as they became absolute and matured. S&C advised Flinkote that it was unclear  
12 whether tort claims that had not yet matured – because, for example, an asbestos-related disease had  
13 not yet manifested itself – were considered existing debts. That advice misapprehended the  
14 controlling definitions, which included as a "debt" any legal liability, whether matured or unmatured,  
15 fixed or contingent. S&C also did not alert Flinkote that under California law, as well as in other  
16 jurisdictions that adopted the Uniform Fraudulent Conveyance Act, a voluntary conveyance made  
17 without fair consideration, where there is existing indebtedness, is presumptively fraudulent, and it  
18 would then be incumbent upon the grantee (here, Imasco) to prove the conveyor (here, Flinkote) was  
19 solvent. See *Neumeyer v. Crown Funding Corp.*, 56 Cal.App.3d 178, 128 Cal.Rptr. 366 (1976).

20 35. S&C failed to advise Flinkote that California in 1986, effective January 1, 1987,  
21 changed the law and adopted a version of the Uniform Fraudulent Transfer Act. The new law made a  
22 transfer fraudulent as to present or future claims if the debtor reasonably should have believed he  
23 would incur debts beyond his ability to pay as they became due. The new statute therefore  
24 incorporated an objective test specifically looking to the incurring of future debts. This test was in  
25 addition to rules making fraudulent those transfers without fair consideration where the debtor was  
26 insolvent or became insolvent as a result of the transfer, or was about to engage in a business for  
27 which its remaining assets were unreasonably small in relation to the business.

28 36. The RPC report is dated June 23, 1987, and reflects that it was prepared for S&C. The



1 RPC report stated that RPC had been retained by S&C to "estimate" the potential costs of pending  
2 and possible future asbestos-related property damage claims against Flintkote, but only "to consider"  
3 asbestos personal injury claims. RPC devoted cursory treatment to Flintkote's asbestos-related  
4 personal injury claims. RPC used a figure of \$9.2 million per year, and to 2001 only, for asbestos  
5 personal injury claims. The RPC report thus was based on an assumption, known to be questionable  
6 by Imasco and S&C, that the ACF would continue to operate with no significant changes in cost to  
7 Flintkote for 14 years. S&C assured Flintkote that directors were entitled to rely upon statements in  
8 an appraisal by an appraiser selected by the board. Although it was not an appraisal under Delaware  
9 law, although it had serious shortcomings in it with respect to Flintkote's asbestos personal injury  
10 liabilities, and although the Flintkote board did not select RPC, S&C advised the board that the RPC  
11 report ought to be considered an "appraisal" of asbestos-related liabilities upon which the directors  
12 could rely. Imasco and S&C did not advise the directors to seek an independent expert analysis  
13 regarding Flintkote's asbestos-related personal injury liabilities from a consultant or to retain  
14 independent counsel without a conflict of interest.

15 37. None of Imasco, S&C, or the RPC report advised Flintkote's board of the facts and  
16 developments described in paragraph 15, above, relevant to considering Flintkote's future asbestos-  
17 related personal injury liabilities.

18 38. S&C labored under a conflict of interest when it undertook to represent and advise  
19 Flintkote while still representing Imasco. Flintkote, a company facing substantial and increasing  
20 asbestos-related claims, was obliged to consider and evaluate the interests of existing and future  
21 creditors before paying out \$525,200,000 in dividends. In contrast, Imasco had every interest in  
22 obtaining the \$525,200,000 to pay for its Canada Trustco acquisition, as had been Imasco's plan all  
23 along. S&C represented both Imasco and Flintkote, with plainly conflicting interests. The  
24 declaration of the dividends was tainted by this conflict of interest, by the inadequate and misleading  
25 legal advice provided by S&C and by the incomplete analysis in the RPC report and advice, which  
26 was procured by S&C for the specific purpose of attempting to justify the legal propriety of the  
27 dividends.

28 39. Imasco improperly caused the dividends to be paid by telling the Flintkote board:

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- our lawyers, acting as your lawyers, together with their consultants, say you can do it;
- to induce you to pay us we agree to protect you if someone sues you; and
- if we are wrong about this and creditors are left unsatisfied and a court finally decides the dividends were improper, we will pay them back.

40. From the time Imasco acquired Genstar in August 1986, through September 29, 2003, Imasco held and maintained complete control over and dominated Flintkote through Imasco's indirect 100% ownership of Flintkote. Flintkote was in no position to assert claims against Imasco or to sue Imasco. S&C continued to act as an instrument of Imasco, guiding and giving legal advice to Flintkote, including with respect to the matters alleged herein, until September of 2003. Imasco's plan, which became Flintkote's plan by reason of Imasco's domination and control over Flintkote, and the continuing advice provided by S&C, was to use Flintkote to pay asbestos liabilities for as long as possible, and to attempt to keep Imasco and Flintkote separate for appearances sake, with the goal that when Flintkote ran out of money, no one would be able to recover the dividends or to fasten alter ego liability upon Imasco for Flintkote's asbestos-related claims. That Flintkote had been injured by wrongful acts leading to the dividends was inherently unknowable, depending upon expertise available only to sophisticated professionals such as S&C and RPC. S&C did not disclose to Flintkote that it had rights with respect to the dividends.

41. From and after the divestiture of its subsidiaries and payment of the dividends, Flintkote operated as an asbestos claims resolution facility. Imasco exercised its domination and control over Flintkote in part through its wholly-owned subsidiaries, Imasco Holdings, Inc. and Imasco Holdings Group, Inc. (collectively, "IHI"). IHI took its orders from Imasco. IHI attorneys were involved in the claim resolution process. Flintkote consistently obtained releases for its parent companies, including Imasco, in settlements with asbestos claimants. Flintkote and IHI shared common officers and directors. Employees of Imasco or IHI were involved in management of Flintkote. S&C continued to advise Imasco or IHI and Flintkote on what should be done with Flintkote, with particular attention to how to avoid alter ego liability for Flintkote's asbestos-related liabilities. Flintkote handled its own asbestos liabilities, rather than join the Center for Claims Resolution as many asbestos defendants had done after the Asbestos Claims Facility disbanded, and

1 Imasco therefore maintained control over the handling of the claims. Following the dividends, as a  
2 claim-paying and insurance-pursuing business, Flintkote's reliance on counsel was critical. Flintkote  
3 continued to consult S&C, Imasco's outside counsel, on asbestos issues, and IHI legal personnel were  
4 involved in overseeing Flintkote's legal strategies because of the importance of monitoring the  
5 critical issue of asbestos liability. The goals of Imasco throughout were to forestall any liability to  
6 repay the dividend and to confine the asbestos-related liabilities to Flintkote.

7 42. Imasco not only had dismantled all Flintkote's profitable businesses and sold them off,  
8 it had taken and used the money to reimburse itself for funds it had expended for buying the one  
9 business it did want, Genstar's Canada Trustco, a financial services company in Canada. After  
10 Imasco took the \$525,200,000 in dividends, Flintkote's remaining assets were woefully insufficient  
11 to satisfy its asbestos-related personal injury liabilities.

12 43. From and after the time of the Imasco hostile takeover, Flintkote did not file public  
13 financial statements. It did not publicly disclose its true financial condition and the nature and extent  
14 of its asbestos liabilities. Instead, Imasco, as Flintkote's ultimate parent corporation filed public  
15 financial statements in Canada that purported to represent Flintkote's financial condition. Imasco  
16 represented continuously that Flintkote's asbestos liabilities were insignificant and unimportant.  
17 Following the dividend paid in 1986, in its March 31, 1987, public financial statements, Imasco  
18 represented, with respect to Flintkote's financial condition, that

19 [C]ertain of the unconsolidated subsidiaries acquired as part of the Genstar transaction are  
20 subject to numerous claims and suits, some of which allege significant damage. In the opinion of  
21 management, all such claims and suits are adequately covered by insurance, or are provided for in  
22 the financial statements, or if not so covered or provided for, the results are not expected to  
23 material affect the Corporation's financial condition.

24 Following the dividend paid in 1987, in its December 31, 1988, public financial statements, Imasco  
25 repeated the foregoing statement. From the date of the payment of the first dividend in 1986 until  
26 within a year of the filing of the Bankruptcy Case, Imasco's financial statements reflected Flintkote  
27 as having a substantial positive net worth. The financial disclosures by Imasco were insufficient to  
28 alert a reader or creditor to the fact that the dividends had been made while Flintkote was insolvent or

1 had rendered Flintkote insolvent, had caused it to be unable to meet its asbestos liabilities as they  
 2 became due and were made in violation of California and other law, including California's Uniform  
 3 Fraudulent Transfer Act and Delaware law respecting declaration of dividends, thereby tolling any  
 4 applicable limitation period.

5 44. In 2003, S&C, acting as counsel to Flintkote, commissioned the first ever study of  
 6 Flintkote's asbestos-related personal injury liabilities, in this case by Chambers Associates, a  
 7 subsidiary of Navigant Consulting, Inc. ("Navigant"). Navigant issued a report dated August 19,  
 8 2003. The Navigant report estimated indemnity payments from 2003 onward to range from \$1.7422  
 9 billion to \$2.8139 billion, and total payments including defense costs to range from \$2.2746 billion to  
 10 \$3.4781 billion.

11 45. In September, 2003, the shares of Flintkote stock were transferred to a trust, and  
 12 Flintkote was no longer owned directly or indirectly by Imperial Tobacco.

13 **FIRST CAUSE OF ACTION**  
 14 **(By Plaintiffs Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Negligence –**  
 15 **Wrongful Death)**

16 46. Plaintiffs Hopkins reallege and incorporate by reference each and all the allegations of  
 17 paragraphs 1 through 45, inclusive.

18 47. At all times herein mentioned, defendants Plant, Uniroyal, and Imperial Tobacco, an  
 19 alter ego of Flintkote, and each of them, were and are engaged in the business of researching,  
 20 manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, leasing, buying,  
 21 offering for sale, supplying, selling, inspecting, endorsing, testing, authorizing, approving, approving,  
 22 certifying, facilitating, warranting, rebranding, manufacturing for others, packaging, specifying,  
 23 requiring, mandating, or otherwise directing and/or facilitates the use of, or advertising of a certain  
 24 product, namely asbestos and other products containing asbestos.

25 48. At all times mentioned, said defendants, and each of them, singularly and jointly,  
 26 negligently, and carelessly researched, manufactured, fabricated, designed, modified, tested or failed  
 27 to test, abated or failed to abate, warned or failed to warn of the health hazards, labeled, assembled,  
 28 distributed, leased, bought, offered for sale, supplied, sold, inspected, endorsed, contracted for  
 installation, of, repaired, marketed, warranted, rebranded, manufactured for others, packaged and

1 advertised, a certain product, namely asbestos, and other products containing asbestos, in that said  
2 products caused personal injuries to users, consumers, workers, bystanders and others, including the  
3 Decedent herein and Decedent's father, William Hopkins, (hereinafter collectively called "exposed  
4 persons"), while being used in a manner that was reasonably foreseeable, thereby rendering said  
5 products hazardous, unsafe, and dangerous for use by "exposed persons."

6 49. Said defendants, and each of them, had a duty to exercise due care in the pursuance of  
7 the activities mentioned above and defendants, and each of them, breached said duty of due care.

8 50. Said defendants, and each of them, knew, or should have known, and intended that the  
9 aforementioned asbestos and products containing asbestos and related products and equipment,  
10 would be transported by truck, rail, ship, and other common carriers, that in the shipping process the  
11 product would break, crumble, or otherwise be damaged; and/or that such products would be used for  
12 insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other  
13 applications, including, but not limited to unpacking, preparing, suing, sawing, drilling, chipping,  
14 hammering, scraping, sanding, breaking, maintaining, inspecting, "rip-out", and other manipulation,  
15 resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or  
16 handling "exposed persons", including decedent herein, would use or be in proximity to and exposed  
17 to said asbestos fibers, which contaminated the packaging, products, environment, and clothing of  
18 persons working in proximity to said products, directly or through reentrainment.

19 51. Decedent has used, handled, or been otherwise exposed to asbestos and asbestos-  
20 containing products referred to herein in a manner that was reasonably foreseeable. Decedent's  
21 exposure to asbestos and asbestos-containing products, asbestos related injury, date of diagnosis, and  
22 employment status is, on current information and belief, as set forth at various locations and  
23 circumstances in Exhibit B, attached to this Complaint and incorporated by reference herein.

24 52. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease,  
25 cancer, and other serious diseases are caused by inhalation or ingestion of asbestos fibers without  
26 perceptible trauma and that said injury, damage, loss, or harm results from exposure to asbestos and  
27 asbestos-containing products over a period time.

28 53. Decedent suffered from a condition related to exposure of asbestos and asbestos-

1 containing products. Decedent was not aware at the time of exposure that asbestos or asbestos-  
2 containing products presented risk of injury and/or disease.

3 54. As a direct and proximate result of the aforesaid conduct of said defendants, and each  
4 of them, Decedent suffered permanent injuries to his person, body, and health, including, but not  
5 limited to, asbestosis, other lung damage, and cancer and related sequelae, and the mental and  
6 emotional distress attendant thereto, and ultimately death, from the effect of exposure to asbestos  
7 fibers, all to his general damage in the sums to be proven at trial.

8 55. As a direct and proximate result of the aforesaid conduct of said defendants, and each  
9 of them, Decedent incurred liability for physicians, surgeons, nurses, hospital care, medicine,  
10 hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to  
11 plaintiffs at this time, and plaintiffs pray leave to amend this complaint accordingly when the true and  
12 exact cost thereof is ascertained. As a direct and proximate result of the aforesaid conduct of said  
13 defendants, and each of them, Decedent incurred liability for the reasonable value of medical care  
14 provided by Decedent's family members measured by, inter alia, the costs associated with the hiring  
15 a registered nurse, home hospice, or other service provider, the true and exact amount thereof being  
16 unknown to plaintiffs at this time, and plaintiffs pray leave to amend this complaint accordingly when  
17 the true and exact costs are known or at time of trial.

18 56. As a further direct and proximate result of the said conduct of said defendants, and  
19 each of them, Decedent incurred loss of income, benefits, entitlements, wages, profits, and  
20 commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and  
21 extent of which are not yet known to plaintiffs; and leave is requested to amend this complaint to  
22 conform to proof at the time of trial.

23 57. As a further direct and proximate result of the said conduct of said defendants, and  
24 each of them, Decedent's exposure to asbestos and asbestos-containing products caused severe and  
25 permanent injury to Decedent, and ultimately Decedent died on September 27, 2005.

26 58. Said defendants, and each of them, and their officers, directors and managing-agents  
27 participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should  
28 have known of, each of the acts set forth herein.

1           59. The herein-described conduct of said defendants, and each of them, was and is  
2 despicable, willful, malicious, fraudulent, outrageous, and in conscious or reckless disregard and  
3 indifference to the safety, health, and rights of "exposed persons", including decedent herein, giving  
4 rise to decedent's claim herein alleged for punitive damages against said defendants.

5           60. At all times prior to his death, Decedent was a faithful and dutiful spouse to plaintiff  
6 Marlene Hopkins, and parent to plaintiffs Michelle and Michael Hopkins.

7           61. As a direct and proximate result of the conduct of said defendants, and each of them,  
8 and the death of Decedent, Decedent's heirs have sustained pecuniary loss resulting from the loss of  
9 care, society, comfort attention, services, and support of Decedent all to the damage of decedent's  
10 heirs.

11           62. As a further direct and proximate result of the conduct of said defendants, and each of  
12 them, and the death of Decedent, decedent's heirs have incurred funeral expenses in an amount  
13 currently not ascertained.

14           63. As a direct and proximate result of the acts, omissions, and conduct of said, and each  
15 of them, as aforesaid, Decedent's exposure to harm or the Decedent as set forth in Exhibit B, attached  
16 to the complaint and incorporated by reference herein.

17           64. Decedent's personal injury claim against Flintkote was resolved by Judgment filed  
18 June 25, 2003, following Flintkote's acceptance of an offer to compromise in action number 408556  
19 in this court.

20           65. Imasco completely dominated and controlled Flintkote, deliberately requiring  
21 Flintkote to divest itself of its operating businesses and assets solely for the benefit of Imasco. After  
22 the divestiture of its businesses, Flintkote did not manufacture or market any products or render any  
23 services to third parties. It served only as a vehicle for Imasco, resolving asbestos and other claims,  
24 including obtaining releases for Imasco, and prosecuting insurance coverage claims. By causing  
25 Flintkote to convert its assets and businesses to cash, and then stripping Flintkote of \$525,200,000,  
26 most of that cash, Imasco prevented Flintkote both from benefiting from the operating profits of the  
27 sold businesses and/or from investing the sale proceeds and using the principal plus earnings to pay  
28 claims.

1           66. In the years following the dividends, Flintkote's benefit programs were administered  
2 by Imasco's subsidiary, IHI. Flintkote, with IHI, filed consolidated financial statements and tax  
3 returns.

4           67. There became in 1986 and 1987 and thereafter such a unity of interest, and of  
5 ownership since Imasco owned indirectly 100% of Flintkote, that separate personalities of Flintkote  
6 and Imasco no longer existed. If the companies are treated as separate, inequitable results will  
7 follow.

8           WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant, Uniroyal, and  
9 Imperial Tobacco as set forth below.

10                               **SECOND CAUSE OF ACTION**

11           **(By Plaintiffs Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Products Liability –  
Wrongful Death)**

12           68. Plaintiffs Hopkins incorporate by reference each and all the allegations of the First  
13 Cause of Action.

14           69. Defendants Plant, Uniroyal, and Imperial Tobacco, knew and intended that the above-  
15 referenced asbestos and asbestos-containing products, would be used by the purchaser or user without  
16 inspection for defects therein or in any of their component parts and without knowledge of the  
17 hazards involved in such use.

18           70. Said asbestos and asbestos-containing products were defective and unsafe for their  
19 intended purpose in that the inhalation or ingestion of asbestos fibers causes serious disease and/or  
20 death. The defect existed in the said products at the time they left the possession of defendants, and  
21 each of them. Said products did, in fact, cause personal injuries, including asbestosis, other lung  
22 damage, cancer, and death to "exposed persons", including Decedent herein, while being used in a  
23 reasonably foreseeable manner, thereby rendering the same defective, unsafe, and dangerous for use.

24           71. "Exposed persons" did not know of the substantial danger of using said products. Said  
25 dangers were not readily recognizable by "exposed persons". Said defendants, and each of them,  
26 further failed to adequately warn of the risks to which decedent and others similarly situated were  
27 exposed.

28           72. In researching, manufacturing, fabricating, designing, modifying, testing or failing to

1 test, warning or failing to warn, labeling, assembling, distributing, leasing, buying, offering for sale,  
2 supplying, selling, inspecting, testing, authorizing, approving, certifying, facilitating, promoting,  
3 representing, endorsing, servicing, installing, contracting for installation, repairing, marketing,  
4 warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-  
5 containing products, said defendants, and each of them, did so with conscious disregard for the safety  
6 of "exposed persons" who came in contact with said asbestos and asbestos-containing products, in  
7 that said defendants, and each of them, had prior knowledge that there was a substantial risk of injury  
8 or death resulting from exposure to asbestos or asbestos-containing products, including, but not  
9 limited to, asbestosis, other lung damages, and cancer. Said knowledge was obtained, in part, from  
10 scientific studies performed by, at the request of, or with the assistance of, said defendants, and each  
11 of them, and which knowledge was obtained by said defendants, and each of them on or before 1930,  
12 and thereafter.

13 73. On or before 1930, and thereafter, said defendants, and each of them, were aware that  
14 members of the general public and other "exposed persons", who would come in contact with their  
15 asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos  
16 or asbestos-containing products could cause injury, and said defendants, and each of them, knew that  
17 members of the general public and other "exposed persons", who came in contact with asbestos and  
18 asbestos-containing products, would assume, and in fact did assume, that exposure to asbestos and  
19 asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health  
20 and human life.

21 74. With said knowledge, said defendants, and each of them, opted to research, manufacture,  
22 fabricate, design, modify, label, assemble, distribute, lease, buy, offer for sale, supply, sell, inspect, service, install,  
23 contract for installation, repair, market, warrant, rebrand, manufacture for others, package and advertise said  
24 asbestos and asbestos-containing products without attempting to protect "exposed persons" from, or warn  
25 "exposed persons" of, the high risk of injury or death resulting from exposure to asbestos and asbestos-containing  
26 products. Rather than attempting to protect "exposed persons" from, or warn "exposed persons" of, the high  
27 risk of injury or death resulting from exposure to asbestos and asbestos-containing products, said  
28 defendants, and each of them, intentionally failed to reveal their knowledge of said risk, and



1 consciously and actively concealed and suppressed said knowledge from "exposed persons" and  
 2 members of the general public, thus impliedly representing to "exposed persons" and members of the  
 3 general public that asbestos and asbestos-containing products were safe for all reasonably  
 4 foreseeable uses. Said defendants, and each of them, engaged in this conduct and made these  
 5 implied representations with the knowledge of the falsity of said implied representations.

6 75. The above-referenced conduct of said defendants, and each of them, was motivated by  
 7 the financial interest of said defendants, and each of them, in the continuing, uninterrupted research,  
 8 design, modification, manufacture, fabrication, labeling, assembly, distribution, lease, purchase, offer  
 9 for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing,  
 10 warranting, rebranding, manufacturing for others, packaging, specifying, requiring, mandating, or  
 11 otherwise directing and/or facilitating the use of, or advertising of asbestos and asbestos-containing  
 12 products. In pursuance of said financial motivation, said defendants, and each of them, consciously  
 13 disregarded the safety of "exposed persons" and in fact were consciously willing and intended to  
 14 permit asbestos and asbestos-containing products to cause injury to "exposed persons" and induced  
 15 persons to work with and be exposed thereto, including plaintiff.

16 76. Plaintiffs allege that the aforementioned defendants, and each of them impliedly warranted their  
 17 asbestos and asbestos-containing products, to be safe for their intended use, but that their asbestos and asbestos-  
 18 containing products, created an unreasonable risk of bodily harm to exposed persons.

19 77. Decedent relied upon defendants', and each of their representations, lack of warnings, and  
 20 implied warranties of fitness of asbestos and their asbestos-containing products. As a direct, foreseeable, and  
 21 proximate result thereof, Decedent suffered permanent injury and death as alleged herein.

22 78. As a direct and proximate result of the actions and conduct outlined herein,  
 23 Plaintiffs Hopkins have suffered the injuries and damages herein alleged.

24 WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant, Uniroyal,  
 25 and Imperial Tobacco as set forth below.

### 26 THIRD CAUSE OF ACTION

27 (By Plaintiff Marlene Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Loss of  
 Consortium)

28 79. Plaintiff Marlene Hopkins re-alleges and incorporates by reference each and all the

1 allegations of the First and Second Causes of Action.

2 80. Decedent and plaintiff Marlene Hopkins were married on February 18, 1961, and at all  
3 times relevant to this action were husband and wife.

4 81. Prior to Decedent's injuries as alleged, Decedent was able and did perform duties  
5 as a spouse. Subsequent to the injuries and as a proximate result thereof, and until Decedent's  
6 death, Decedent was unable to perform the necessary duties as a spouse and the work and service  
7 usually performed in the care, maintenance, and management of the family home. As a  
8 proximate result thereof, plaintiff Marlene Hopkins was permanently deprived of the consortium of  
9 her spouse, including the performance of duties, all to plaintiff Marlene Hopkin's damages, in an  
10 amount presently unknown to plaintiff, but which will be proved at the time of trial.

11 82. Plaintiff Marlene Hopkins' discovery of the cause of Decedent's loss of consortium, as  
12 herein alleged, first occurred within one year last past from the filing of this Complaint.

13 83. As a direct and proximate result of the acts of said defendants, and the severe injuries  
14 and death caused thereby to Decedent as set forth in this complaint, plaintiff Marlene Hopkins has  
15 suffered loss of consortium, including but not by way of limitation, loss of services, marital relations,  
16 society, comfort, companionship, love, and affection of said spouse, and has suffered severe mental  
17 and emotional distress, and general nervousness as a result thereof.

18 WHEREFORE, plaintiff Marlene Hopkins prays judgment against defendants Plant,  
19 Uniroyal, and Imperial Tobacco as set forth below.

#### 20 **FOURTH CAUSE OF ACTION**

21 (By Plaintiffs Hopkins Against Defendants Plant and Uniroyal for Negligence — Survival)

22 84. Plaintiffs Hopkins re-allege and incorporate by reference each and all the allegations  
23 of the First Cause of Action.

24 85. Plaintiffs bring this action pursuant to California Code of Civil Procedure section  
25 377.30 et. seq. As a direct and proximate result of the actions and conduct outlined herein, Decedent  
26 suffered the injuries and damages herein alleged. Plaintiffs are entitled to recover all damages  
27 sustained by Decedent as alleged above.

28 WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant and Uniroyal as

1 set forth below.

2 **FIFTH CAUSE OF ACTION**

3 (By Plaintiffs Hopkins Against Defendants Plant and Uniroyal to Products Liability – Survival)

4 86. Plaintiffs Hopkins re-allege and incorporate by reference each and all the allegations  
5 of the First and Second Causes of Action.

6 87. As a direct and proximate result of the exposure to defendants' products and the  
7 conduct outlined herein, Decedent has suffered the injuries and damages herein alleged.

8 88. Plaintiffs Hopkins are entitled to recover all damages sustained by Decedent as alleged  
9 above.

10 WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant and Uniroyal as  
11 set forth below.

12 **SIXTH CAUSE OF ACTION**

13 (By Plaintiffs Hopkins Against Defendants Plant and Uniroyal for False Representation Under  
14 Restatement of Torts Section 402-B -- Survival)

15 89. Plaintiffs Hopkins re-allege and incorporates by reference each and all the allegations  
16 of the First and Second Causes of Action.

17 90. At the aforementioned time when defendants Plant and Uniroyal, and each of them,  
18 researched, manufactured, fabricated, designed, modified, tested or failed to test, inadequately  
19 warned or failed to warn, labeled, assembled, distributed, leased, bought, offered for sale, supplied,  
20 sold, inspected, serviced, authorized, approved, certified, facilitated, promoted, installed, represented,  
21 endorsed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for  
22 others, packaged, and advertised the said asbestos and asbestos-containing products, as hereinabove  
23 set forth, the defendants, and each of them, expressly and impliedly represented to members of the  
24 general public, including the purchasers and users of said product, and other "exposed persons",  
25 including the decedent herein and his employers, that asbestos and asbestos-containing products,  
26 were of merchantable quality, and safe for the use for which they were intended.

27 91. The purchasers and users of said asbestos and asbestos-containing products, and other  
28 "exposed persons", including the Decedent and his employers, relied upon said representations of  
said defendants, and each of them, in the selection purchase, and use of asbestos and asbestos-

1 containing products.

2 92. Said representations by defendants, and each of them, were false and untrue, and  
3 defendants knew at the time they were untrue, in that the asbestos and asbestos-containing products,  
4 were not safe for their intended use, nor were they of merchantable quality as represented by  
5 defendants, and each of them, in that asbestos and asbestos-containing products have very dangerous  
6 properties and defects whereby said products cause asbestosis, other lung damages, and cancer, and  
7 have other defects that cause injury and damage to the users of said products and other "exposed  
8 persons", thereby threatening the health and life of said persons including decedent herein.

9 93. As a direct and proximate result of said false representations by defendants, and each of  
10 them, the Decedent suffered injury and death as set forth.

11 WHEREFORE, plaintiffs pray judgment against defendants Plant and Uniroyal, set forth  
12 below.

13 **SEVENTH CAUSE OF ACTION**

14 **(By Plaintiffs Hopkins Against Defendant Plant for Contractor Liability)**

15 94. Plaintiffs Hopkins re-allege and incorporate by reference each and all the allegations  
16 of the First and Second Causes of Action.

17 95. At all times mentioned herein, defendant Plant, owned, leased, maintained, managed,  
18 and/or controlled the premises listed on Exhibit B where Decedent was present. The information  
19 provided on Exhibit B is preliminary, based on recall over events covering many years and further  
20 investigation and discovery may produce more reliable information. Additionally, Decedent might  
21 have been present at these or other of Plant's premises at other locations and on other occasions.

22 96. Prior to and at said times and places, defendant Plant caused certain asbestos-  
23 containing insulation, other building materials, products, and toxic substances to be constructed,  
24 installed, maintained, used, supplied, replaced, repaired, and/or removed on each of the aforesaid  
25 respective premises, by their own workers and/or by various unqualified or unskilled contractors and  
26 caused the release of dangerous quantities of toxic asbestos fibers and other toxic substances into the  
27 ambient air and thereby created a hazardous and unsafe condition to decedent and other persons  
28 exposed to said asbestos fibers and toxic substances while present at said premises.

1           97. At all times mentioned herein, said defendant Plant knew or in the exercise of ordinary  
2 and reasonable care should have known, that the foregoing conditions and activities created a  
3 dangerous, hazardous, and unsafe condition, and unreasonable risk of harm and personal injury to  
4 decedent and other workers or persons so exposed present on each of the aforesaid respective  
5 premises.

6           98. At all times relevant herein, Decedent entered said premises and used or occupied  
7 each of said respective premises as intended and for Plant's benefit and advantage and at Plant's  
8 request and invitation. In so doing, Decedent was exposed to dangerous quantities of asbestos fibers  
9 and other toxic substances released into the ambient air by the aforesaid hazardous conditions and  
10 activities managed, maintained, initiated, and/or otherwise created, controlled, or caused by said  
11 defendant Plant.

12           99. Decedent at all times was unaware of the hazardous condition or the risk of  
13 personal injury created by the aforesaid presence and use of asbestos products and materials and  
14 other toxic substances on said premises.

15           100. At all times mentioned herein, Defendant Plant remained in control of the premises  
16 where Decedent was performing his work.

17           101. At all times mentioned herein, defendant Plant owed to decedent and others similarly  
18 situated a duty to exercise  
19 ordinary care in the management of such premises so as to avoid exposing workers such as  
20 decedent to an unreasonable risk of harm and to avoid causing injury to said person.

21           102. At all times mentioned herein, defendant Plant, knew, or in the exercise of ordinary  
22 and reasonable care should have known, that the premises that were in their control would be used  
23 without knowledge of, or inspection for, defects or dangerous conditions and that the persons present  
24 and using said premises would not be aware of the aforementioned hazardous conditions to which  
25 they were exposed on the premises.

26           103. At all times mentioned herein, defendant Plant negligently failed to maintain, manage,  
27 inspect, survey, or control said premises, or to abate, or correct, or to warn decedent of, the existence  
28 of the aforesaid dangerous conditions and hazards on or about said premises.

1           104. Prior to and at the times and places aforesaid, defendant Plant caused certain  
2 asbestos-containing insulation, other building materials, products, and toxic substances to be  
3 constructed, installed, maintained, used, replaced, repaired and/or removed on each of their  
4 aforesaid respective premises, by their own workers and/or by employing various contractors,  
5 and caused the release of dangerous quantities of toxic asbestos fibers and other toxic substances  
6 into the ambient air and thereby injured decedent.

7           105. At all times mentioned herein, defendant Plant:

8               a. Should have recognized that the work of said contractors would create during  
9 the progress of the work, dangerous, hazardous, and unsafe conditions, which could or would  
10 harm decedent and others unless special precautions were taken;

11              b. Knew or had reason to know, that the contractors it had selected and hired to  
12 install, remove, abate, or otherwise handle asbestos-containing materials were unfit, unskilled,  
13 unlicensed, or otherwise unqualified to do so;

14              c. Failed to use reasonable care to discover whether the contractors it selected and  
15 hired to install, remove, abate, or otherwise handle asbestos-containing materials were  
16 competent, or qualified to do so.  
17

18           106. In part, Decedent was exposed to dangerous asbestos fibers and other toxic  
19 substances by reason of such contractors' failure to take the necessary precautions.

20           107. The work of contractors on premises controlled by defendant Plant created an unsafe premise  
21 and an unsafe work place by reason of the release of dangerous quantities of toxic substances, including but not  
22 limited to asbestos.

23           108. Prior to and at said times and places, defendant Plant was subject to certain ordinances,  
24 standards, statutes, and other government regulations promulgated by the United States Government,  
25 the State of California, and others, including but not limited to the General Industry Safety Orders  
26 promulgated pursuant to California Labor Code § 6400 and the California Administrative Code under  
27 the Division of Industrial Safety, Department of Industrial Relations, including but not limited to  
28 Title VHL Group 9 (Control of Hazardous Substances), Article 81, § 4150, § 4106, § 4107, and §

4108, and Threshold Limit Values as documented for asbestos and other toxic substances under Appendix A, Table 1 of said Safety Orders; additionally, California Health and Safety Code § 40.200, et seq., which empowers the Bay Area Air Quality Management District (B.A.A.Q.D.) to promulgate regulations including, but not limited to B.A.A.Q.D. Regulation 11, Rules 2 and 14, Title 40 Code of Federal Regulations, Chapter 1, Part 61, et seq. -- The National Emission Standards for Hazardous Air Pollutants, which required defendant Plant to provide specific safeguards or precautions to prevent or reduce the inhalation of asbestos dust and other toxic fumes or substances; and said defendant Plant failed to provide the required safeguards and precautions. Defendant's violations of said codes include, but are not limited to:

- (a) Failing to comply with statutes and allowing ambient levels of airborne asbestos fiber to exceed the permissible/allowable levels with regard to the aforementioned statutes;
- (b) Failing to segregate work involving the release of asbestos or other toxic dusts;
- (c) Failing to suppress dust using prescribed ventilation techniques;
- (d) Failing to suppress dust using prescribed "wet down" techniques;
- (e) Failing to warn or educate decedent or others regarding asbestos or other toxic substances on the premises;
- (f) Failing to provide approved respiratory protection devices;
- (g) Failing to ensure "approved" respiratory protection devices were used adequately;
- (h) Failing to provide for an on-going health screening program for those exposed to asbestos on the premises;
- (i) Failing to provide adequate housekeeping and clean-up of the work place;
- (j) Failing to adequately warn of the hazards associated with asbestos as required by these statutes;

(k) Failing to adequately report renovation and disturbance of asbestos-containing materials, including but not limited to B.A.A.O.M.D. Regulation 11, Rules 2 and 14;

(l) Failing to have an asbestos removal supervisor as required by regulation;

(m) Failing to get approval for renovation as required by statutes; and

(n) Failing to maintain records as required by statute.

109. Defendant Plant was the "statutory employer" of decedent as defined by the California Labor Code and California case law.

110. Decedent at all times was unaware of the hazardous condition or the risk of personal injury created by defendant's violation of said regulations, ordinances, or statutes.

111. At all times mentioned herein, Decedent was a member of the class of persons whose safety was intended to be protected by the regulations, standards, statutes, or ordinances described in the foregoing paragraphs.

112. At all times mentioned herein, said defendant Plant, knew, or in the exercise of ordinary and reasonable care should have known, that the premises that were in its control would be used without knowledge of, or inspection for, defects or dangerous conditions, that the persons present and using said premises would not be aware of the aforesaid hazardous conditions to which they were exposed on the premises, and that such persons were unaware of the aforesaid violations of codes, regulations, and statutes.

113. As a proximate result of the foregoing, Decedent developed asbestos-related illness, which has caused great injury and disability to Decedent, and ultimately death, as previously set forth, and plaintiffs have suffered damages as herein alleged.

WHEREFORE, plaintiffs Hopkins pray judgment against defendant Plant, as set forth below.

#### **EIGHTH CAUSE OF ACTION**

(By Flintkote Against Imperial Tobacco For Declaration of Alter Ego Liability)

114. Flintkote re-alleges and incorporates by reference each and all the allegations of paragraphs 1 through 45 and 65 through 67, inclusive.

115. An actual controversy exists between Flintkote and Imperial Tobacco arising from



1 Imasco's domination and control of Flintkote, including Imasco's causing Flintkote to create the  
 2 subsidiaries, isolate the asbestos liabilities, sell the subsidiaries, and declare and pay the Dividends,  
 3 and the use of Flintkote by Imasco solely for Imasco's own purposes, as set forth herein.

4 116. Flintkote contends that Imperial Tobacco is Flintkote's alter ego and is responsible to  
 5 pay asbestos-related claims asserted against Flintkote, such that if Flintkote is correct, the burden of  
 6 those claims will be borne in whole or in part by Imperial Tobacco.

7 117. Flintkote is informed and believes, and upon such information and belief alleges, that  
 8 Imperial Tobacco disagrees with each of Flintkote's contentions.

9 118. Flintkote has the right to assert alter ego claims against its former indirect parent  
 10 Imperial Tobacco.

11 WHEREFORE, plaintiff Flintkote prays judgment against Imperial Tobacco as set forth  
 12 below.

#### 13 **NINTH CAUSE OF ACTION**

14 **(By Flintkote Against Imperial Tobacco For Receiving Illegal Dividends)**

15 119. Flintkote re-alleges and incorporates by reference each and all the allegations of  
 16 paragraphs 1 through 45, inclusive.

17 120. The dividends of \$170,200,000 in 1986 and \$355,000,000 in 1987 were not payable  
 18 out of Flintkote's net profits for either the year in which the dividend was declared or the preceding  
 19 fiscal year.

20 121. The dividends in 1986 and 1987 (collectively, the "Dividends") could be paid only out  
 21 of surplus defined as the amount in excess of Flintkote's capital by which its assets exceeded its  
 22 liabilities. Flintkote's asbestos related personal injury and its other liabilities exceeded its assets.

23 122. Imasco and its lawyers, S&C, caused the directors to declare and pay the dividends  
 24 when they were not authorized under the dividend statutes.

25 123. Imasco actively procured and participated in the declarations of the illegal dividends,  
 26 knew the receipt of the dividends was improper, and reaped the benefits of them.

27 WHEREFORE, plaintiff Flintkote prays judgment against Imperial Tobacco as set forth  
 28 below.

#### **TENTH CAUSE OF ACTION**

**(By Flintkote Asserting the Rights of a Creditor,  
Against Imperial Tobacco for Recovery of Illegal Dividends)**

124. Flintkote realleges and incorporates by reference each and all the allegations of the Ninth Cause of Action.

125. Flintkote is operating its business and conducting its affairs as the debtor and debtor in possession in the Bankruptcy Case. Flintkote may recover any transfer of money that is voidable under applicable state law by a creditor holding an unsecured claim that is allowable in the Bankruptcy Case.

126. The transfers of the Dividends, \$170,200,000 on or about December 30, 1986, and \$355,000,000 on or about August 31, 1987, were transfers of interests of the debtor in property.

127. At the time of the Dividends, there existed one or more individuals (a) who had suffered from inherently unknowable injuries to a blameless ignorant party as a result of exposure to asbestos products manufactured or sold by Flintkote prior to the payment of the Dividends, tolling the applicable limitation periods until such time as the claimant was chargeable with knowledge that his condition was attributable to asbestos exposure, (b) who were creditors of Flintkote due to exposure to asbestos products manufactured or sold by Flintkote prior to the payment of the Dividends, and (c) who hold allowable claims against Flintkote and its bankruptcy estate.

128. From and after the date of each Dividend, until at least September 29, 2003, Imasco controlled and dominated Flintkote, and did not disclose, and caused Flintkote not to disclose the true nature of Flintkote's financial condition to creditors. Creditors did not know and could not have known that the transfer of the dividends to Imasco rendered Flintkote insolvent.

129. The Dividends are invalid and avoidable because the Dividends were paid at a time when Flintkote did not have a surplus of assets over liabilities. Because of Imasco's domination and control of Flintkote and because of the suppression of Flintkote's true financial condition in the public financial reporting Imasco released in Canada, this fact was not known and could not reasonably have been known to creditors of Flintkote, including asbestos disease claimants. Flintkote may recover the Dividends from Imasco who was the entity for whose benefit such transfers were made. To the extent the Dividends passed through entities before their delivery to Imasco, such entities were mere conduits, or to the extent such intermediate entities were not mere conduits and the

1 transfers were not made for Imasco's benefit, Imasco's ultimate receipt of the Dividends was not for  
2 value or in good faith.

3 WHEREFORE, Flintkote prays judgment against Imperial Tobacco as set forth below.  
4

5 **ELEVENTH CAUSE OF ACTION**

6 **(By Flintkote Asserting the Rights of a Creditor Against Imperial Tobacco For Recovery of  
Fraudulent Transfers)**

7 130. Flintkote rec alleges and incorporates by reference each and all the allegations of the  
8 Ninth and Tenth Causes of Action.

9 131. At the time of the Dividends, or within the applicable limitation period thereafter,  
10 there existed (a) one or more individuals who had asbestos-related personal injury lawsuits on file  
11 against Flintkote, and those lawsuits remained on file until May 1, 2004, or (b) one or more  
12 individuals who suffered from asbestos-related diseases arising as a result of exposure to Flintkote  
13 products who suffered from inherently unknowable injuries and who was blamelessly ignorant,  
14 thereby tolling any applicable limitation periods until such time as the each such individual was  
15 chargeable with knowledge that his condition was attributable to asbestos exposure, or (c) one or  
16 more individuals who suffered from asbestos-related diseases arising as a result of exposure to  
17 Flintkote products who did not know and could not reasonably have been known of Flintkote's true  
18 financial condition because of Imasco's domination and control of Flintkote and because of the  
19 suppression of Flintkote's true financial condition in the public financial reporting Imasco released in  
20 Canada, some or all of which serve to toll the applicable limitations period.

21 132. The Dividend of \$170,200,000 was made without receipt of fair consideration by  
22 Flintkote who: (a) was or would be rendered insolvent by the transfer and/or (b) was about to be  
23 engaged in a business, paying asbestos claims, for which its property remaining after the Dividend  
24 was unreasonably small capital.

25 133. When the Dividend of \$355,000,000 was paid in 1987, it constituted a fraudulent  
26 transfer in that Flintkote received no reasonably equivalent value for it and one or more of the  
27 following was true: (a) Flintkote was insolvent or became insolvent as a result of the transfer, or (b)  
28 Flintkote was engaged in or about to engage in the business of paying asbestos claims for which

1 Flintkote's assets were unreasonably small in relation to the business, or (c) Flintkote reasonably  
2 should have believed that it would incur debts beyond its ability to pay as they became due.

3 134. The separation of Flintkote's asbestos liabilities from its valuable operating assets as a  
4 result of the formation of subsidiary corporations, the sale of those subsidiary corporations; and the  
5 transfer of the Dividends to Imasco, constituted an integrated scheme of transfers orchestrated by  
6 Imasco with actual intent to hinder, delay or defraud one or more present or future creditors of  
7 Flintkote, implicating at least the following badges of fraud:

- 8 • The proceeds of the scheme were transferred to an insider;
- 9 • The resulting financial condition of Flintkote was concealed;
- 10 • The transfers, including the separation of asbestos liabilities from operating assets,  
11 occurred because Flintkote had been sued and threatened with additional suits;
- 12 • The transfers, including the separation of asbestos liabilities from operating assets,  
13 involved substantially all of Flintkote's assets;
- 14 • The consideration ultimately received by Flintkote at the conclusion of the integrated  
15 scheme was not reasonably equivalent to the value of the assets transferred;
- 16 • Flintkote was insolvent or became insolvent shortly after the transfers comprising the  
17 integrated scheme;
- 18 • The transfers comprising the integrated scheme were made after substantial contingent  
19 and unmatured indebtedness had been incurred, but before such indebtedness had  
20 matured.

21  
22 135. Flintkote may recover the Dividends from Imasco who was the entity for whose  
23 benefit such transfers were made. To the extent the Dividends passed through entities before their  
24 delivery to Imasco, such entities were mere conduits, or to the extent such intermediate entities were  
25 not mere conduits and the transfers were not made for Imasco's benefit, Imasco's ultimate receipt of  
26 the Dividends was not for value or in good faith.

27 **TWELFTH CAUSE OF ACTION**  
28 **(By Flintkote Against Imperial Tobacco for Breach of Fiduciary Duty)**

1 136. Flintkote re-alleges and incorporates by reference each and all the allegations of the  
2 Ninth, Tenth, and Eleventh Causes of Action.

3 137. The directors of Flintkote owed a fiduciary duty to Flintkote and to its creditors  
4 because by reason of its asbestos-related liabilities, Flintkote was insolvent or in the vicinity of  
5 insolvency. Flintkote directors were obliged to consider whether, and reasonably should have  
6 believed that, Flintkote would incur debts by reason of asbestos liabilities beyond its ability to pay as  
7 they became due.

8 138. By reason of the foregoing, Imasco prevented the Flintkote directors from complying  
9 with their fiduciary duties in declaring the dividends and ordering them paid.

10 139. Imasco, now Imperial Tobacco, actively procured and participated in the failure to  
11 comply with fiduciary duties and reaped the benefits of them.

12 WHEREFORE, plaintiff Flintkote prays judgment against Imperial Tobacco as set forth  
13 below.

14 **THIRTEENTH CAUSE OF ACTION**  
15 **(By Flintkote Against S&C for Breach of Duty and Negligence)**

16 140. Flintkote realleges and incorporates by reference each and all the allegations of the  
17 Ninth through the Twelfth Causes of Action.

18 141. S&C as lawyers represented Flintkote in connection with the 1986 and 1987  
19 dividends. S&C also represented Imasco with respect to the same subject matter. S&C continued to  
20 represent Flintkote with respect to the matters alleged herein until within one year of the filing of the  
21 Bankruptcy Case.

22 142. The relation between attorney and client is a fiduciary relation of the very highest  
23 character.

24 143. S&C had a duty without informed written consent of each client not to accept  
25 representation of more than one client in a matter in which the interests of the clients potentially  
26 conflict and not to accept or continue representation of more than one client in which the interests of  
27 the clients actually conflict. Absent consent of both clients after full disclosure, S&C had a duty not  
28 to accept or continue employment of both clients if it would be likely to involve S&C in representing

1 differing and adverse interests.

2 144. S&C breached its duty and accepted and continued representation of Flintkote and  
3 Imasco in connection with the Dividends, which was a matter in which the interests of the clients  
4 were in stark conflict, adverse, and differing.

5 145. Flintkote did not give written consent to S&C's conflicting representation of differing  
6 interests.

7 146. S&C had a duty to use reasonable care in advising Flintkote. S&C without reasonable  
8 care advised the Flintkote directors that they could go forward with the 1986 dividend. S&C in 1987  
9 without reasonable care misrepresented California law to Flintkote as respects rules governing  
10 potentially fraudulent transfers. S&C in 1987 also represented, without reasonable care, to the board  
11 that the directors could rely upon the RPC report as an appraisal and thus were protected by a  
12 principle that directors are entitled to rely on statements in an appraisal by an appraiser selected with  
13 reasonable care by the board. But the RPC report was not an appraisal of Flintkote's asbestos-related  
14 personal injury liabilities, and RPC was not selected by the board, but rather by Imasco's counsel.

15 147. The conflicted representation and the misrepresentations by S&C proximately caused  
16 the declaration and payment of the dividends.

17 WHEREFORE plaintiff Flintkote prays judgment against S&C as set forth below.

18 **FOURTEENTH CAUSE OF ACTION**

19 (By Flintkote Against Imperial Tobacco For Constructive Trust)

20 148. Flintkote re-alleges and incorporates by reference each and all the allegations of the  
21 Ninth through the Thirteenth Causes of Action.

22 149. By reason of the foregoing, Imperial Tobacco holds the dividend payments received  
23 through the wrongful acts and the complete dominance, control, and authority Imasco held over  
24 Flintkote, and by reason of the mistakes engendered by the conflicted representation and negligent  
25 advice provided by Imasco's lawyers, shared with Flintkote, as set forth above. Flintkote has the  
26 right to those dividends and Imperial Tobacco holds them as a constructive trustee for the benefit of  
27 Flintkote.

28 **FIFTEENTH CAUSE OF ACTION**

(By Flintkote Against Imperial Tobacco For Restitution)

1 150. Flintkote realleges and incorporates by reference each and all the allegations of the  
2 Ninth through the Thirteenth Causes of Action.

3 151. The declarations of the Dividends were invalid because they were the result of  
4 conflicted legal representation and erroneous legal advice given by Imasco's lawyers, shared with  
5 Flintkote.

6 152. Imasco was the recipient of the Dividends under circumstances where it directly and  
7 through its lawyers wrongfully procured payment of the Dividends.

8 153. Flintkote is entitled to restitution from Imperial Tobacco of the payments made  
9 pursuant to the tainted and invalid declarations of the Dividends.

#### 10 SIXTEENTH CAUSE OF ACTION

11 (By Flintkote against Imperial Tobacco for Declaratory Relief)

12 154. Flintkote re-alleges and incorporates by reference each and all the allegations of the  
13 Ninth through the Fifteenth Causes of Action.

14 155. An actual controversy exists between Flintkote and Imperial Tobacco arising from the  
15 Dividend Repayment Contract of July 27, 1987 ("Dividend Repayment Contract").

16 156. Flintkote contends that the dividends were improperly paid within the meaning of the  
17 Dividend Repayment Contract because they were paid under one or more of the following  
18 circumstances

- 19 • as illegal dividends;
- 20 • as a fraudulent conveyance or fraudulent transfer under California law;
- 21 • in breach of fiduciary duty aided and abetted by Imasco;
- 22 • as products of conflicted and tainted legal representation by S&C;
- 23 • as products of negligent legal advice by S&C;
- 24 • as improper by reason of having been induced by the promise in 1986 by Imasco to  
25 repay, and by the Dividend Repayment Contract in 1987;
- 26 • as otherwise improper within the meaning of the Dividend Repayment Contract.

27 157. Flintkote is informed and believes, and upon such information and belief alleges, that  
28 Imperial Tobacco disagrees with each of Flintkote's contentions.

158. In the event the court finally determines that the 1986 and 1987 dividends were improperly paid, then Imperial Tobacco will be obligated to repay to Flintkote any amounts (up to the full amount of the dividends) that are finally determined by a court of competent jurisdiction to be due to Flintkote creditors but that cannot be satisfied out of assets of Flintkote because of the dividends finally determined to have been improperly paid, upon entry of the judgments described in the DRC.

159. Flintkote seeks a declaration as to the legal rights and duties of the parties as to propriety of the dividends and duties arising from dividends having been improperly paid.

WHEREFORE, plaintiff Flintkote prays judgment against Imperial Tobacco as set forth below.

## PRAAYER

**WHEREFORE, plaintiffs pray judgment:**

1. On the First and Second Causes of Action for recovery by plaintiffs Hopkins against defendants Plant, Uniroyal, and Imperial Tobacco jointly and severally, of damages according to proof;

2. On the Third Cause of Action for recovery by plaintiff Marlene Hopkins against defendants Plant, Uniroyal, and Imperial Tobacco jointly and severally, of damages according to proof;

3. On the Fourth, Fifth, and Sixth Causes of Action, for recovery by plaintiffs Hopkins against defendants Plant and Uniroyal of damages according to proof;

4. On the Seventh Cause of Action, for recovery by plaintiffs Hopkins against defendant Plant of damages according to proof;

5. On the Eighth Cause of Action, for an order declaring that Imperial Tobacco is liable as the alter ego of Flintkote with respect to asbestos-related liabilities and is responsible to pay such liabilities;

6. On the Ninth, Tenth, Eleventh, and Twelfth Causes of Action, for recovery by Flintkote from Imperial Tobacco in the amount of \$525,200,000, plus interest, or such other amount as may be proved;



7. On the Thirteenth Cause of Action, for recovery by Flintkote from S&C in the amount of \$525,200,000 plus interest, or such other amount as may be proved;

8. On the Fourteenth and Fifteenth Causes of Action, for recovery by Flintkote from Imperial Tobacco in the amount of \$525,200,000, plus interest, or such other amount as may be proved;

9. On the Sixteenth Cause of Action, for an order declaring and determining in favor of Flintkote that the \$170,200,000 dividend declared and paid in December 1986 and the \$355,000,000 dividend declared and paid in July 1987 by Flintkote were improperly paid within the meaning of the Dividend Recovery Contract letter from Inasco dated July 27, 1987, and that upon the occurrence of the remaining determinations described in the Dividend Recovery Contract, that Imperial Tobacco will be obligated to repay to Flintkote the amounts (up to the full amount of the dividends) finally determined to be due to Flintkote creditors but that cannot be satisfied out of the assets of Flintkote because of the payment of the dividends.

Date: 4/5/06

BRAYTON PURCELL LLP

By:

Gilbert L. Purcell  
Attorneys for Plaintiff Marlene Hopkins,  
Michelle Hopkins, and Michael Hopkins

Additional Counsel for Plaintiff The Flintkote Company:

Eliot S. Jubelirer (061654)  
Jean L. Bertrand (083250)  
Morgenstein & Jubelirer  
One Market, Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105  
Telephone (415) 901-8700

SNYDER MILLER & ORTON LLP

By:

Stephen M. Snyder  
Attorneys for Plaintiff  
The Flintkote Company

Alan Pedlar (State Bar No. 72216)  
The Law Office of Alan Pedlar  
1112 Via Malibu  
Aptos, CA 95083  
Telephone (831) 688-2667

Kelly C. Wooster (State Bar No. 41196)  
112 Rock Creek Court  
P.O. Box 62  
Copperopolis, CA 95228  
Telephone: (209) 785-2437

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& Orton  
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36

COMPLAINT

**EXHIBIT A**

July 27, 1987

Directors of  
The Flintkote Company

Inasco Limited  
4 Westmount Square  
Montreal, Canada  
H3Z 2S8

P.O. Box 6800  
Montreal, Canada  
H3C 3L4

(514) 937 9111  
Cable: (Tallmanco)  
Telex: 05 24178

Inasco Limited ("Inasco") hereby undertakes to repay to Flintkote any amounts (up to the full amount of dividends declared during the period in which Inasco has been the indirect owner of Flintkote) that are finally determined by a court of competent jurisdiction to be due to Flintkote creditors, including tort judgment creditors, but that cannot be satisfied out of the assets of Flintkote because of dividends finally determined to have been improperly paid during Inasco's indirect ownership of Flintkote. Repayment will be made after (i) entry of a final, unsatisfied judgment against Flintkote that cannot be satisfied from Flintkote assets, and (ii) entry of a final judgment against either Flintkote, its directors or Inasco on the basis that (a) the dividends in question were improperly paid, and (b) Flintkote would have been able to satisfy, at least in part, the creditor's judgment but for the payment of the improper dividends. For purposes of this undertaking, a judgment that can still be appealed or as to which an appeal is pending is not considered "final."

In the event the issue of the propriety of Flintkote dividends is raised in a suit against Flintkote or its directors, Flintkote and each director named in the suit shall give prompt notice to the General Counsel of Inasco that the issue has been raised and shall permit Inasco an opportunity to control the defense of that issue.

Very truly yours,

Inasco Limited

By: 

FTKT 017467  
CONFIDENTIAL

**EXHIBIT B**

**EXHIBIT B**

Decedent's exposure to asbestos and asbestos-containing products occurred at various locations inside the State of California, including but not limited to:

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Roosevelt High School, 4250 R Tulare St., Fresno, CA	Carpenter	Summer 1950
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno High School, 1839 E. Echo St., Fresno, CA	Carpenter	Summer 1950
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fire Station No. 88, 5380 Tulare St., Fresno, CA	Carpenter	Summer 1951
Hopkins & Son Construction P.O. 5438 Fresno, CA	Reedley College, 995 N. Reedley Ave. Reedley, CA	Carpenter	Summer 1951
Hopkins & Son Construction P.O. 5438 Fresno, CA	Crocket Bros. Dodge Dealership, Tuolumne & Broadway Sts, Fresno, CA	Carpenter	Summer 1957
Hopkins & Son Construction P.O. 5438 Fresno, CA	Ann's Beer Mug, 3046 E. Belmont St., Fresno, CA	Carpenter	Summer 1958
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno Technical School, Tuolumne & Blackstone Sts., Fresno, CA	Carpenter	Summer 1959
Hopkins & Son Construction P.O. 5438 Fresno, CA	Ann's Beer Mug, 3046 E. Belmont St., Fresno, CA	Carpenter	1960
Hopkins & Son Construction P.O. 5438 Fresno, CA	Swift Poultry Plant East St. Fresno, CA	Carpenter (periodically)	1960-1968
Hopkins & Son Construction P.O. 5438 Fresno, CA	Central High School 3535 N. Cornelia St., Fresno, CA	Carpenter	1961
Hopkins & Son Construction P.O. 5438 Fresno, CA	Kirk Elementary, 2000 E. Belgravia St., Fresno, CA	Carpenter	1960

## EXHIBIT B (cont'd.)

Employer	Location of Exposure	Job Title	Exposure Dates
Hopkins & Son Construction P.O. 5438 Fresno, CA	McKinley Avenue Medical Building, 610 McKinley Ave., Fresno, CA	Carpenter	1962
Hopkins & Son Construction P.O. 5438 Fresno, CA	7 Retail Stores, names presently unknown, downtown Fresno, between Fulton & Kern Sts., Fresno, CA	Carpenter	1962
Hopkins & Son Construction P.O. 5438 Fresno, CA	Scandinavian Middle School, 3232 N. Sierra St., Fresno, CA	Carpenter	1962; 1964
Hopkins & Son Construction P.O. 5438 Fresno, CA	Pacific Gas & Electric, Main Building, Corcoran, CA	Carpenter	1963
Hopkins & Son Construction P.O. 5438 Fresno, CA	Laton Elementary School, 6065 East Latonia St., Laton, CA	Carpenter	1963
Hopkins & Son Construction P.O. 5438 Fresno, CA	Travelers Body & Fender Works, 1861 N. Broadway St., Fresno, CA	Carpenter	1963
Hopkins & Son Construction P.O. 5438 Fresno, CA	Jane Adams Elementary School, 2117 W. McKinley Ave., Fresno, CA	Carpenter	1964
Hopkins & Son Construction P.O. 5438 Fresno, CA	Retail Store Building, Pine & Blackstone Sts., Fresno, CA	Carpenter	1965
Hopkins & Son Construction P.O. 5438 Fresno, CA	City of Fresno Waste Water Treatment Plant, 5607 W. Jensen St., Fresno, CA	Carpenter	1966
Hopkins & Son Construction P.O. 5438 Fresno, CA	Dairy Queen, Pinedale, CA	Carpenter	1966

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## EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Sequoia Middle School, 4050 E. Hamilton St., Fresno, CA	Carpenter	1966
Hopkins & Son Construction P.O. 5438 Fresno, CA	County of Fresno, Welfare Dept. Building, 4468 E. Kings Canyon, Fresno, CA	Carpenter	1967
Hopkins & Son Construction P.O. 5438 Fresno, CA	PG&E Building, Fulton and Tuolumne Sts., Fresno, CA	Carpenter	1968
Hopkins & Son Construction P.O. 5438 Fresno, CA	Clovis Fire Station, Administration Bldg. 633 Pollack St., Clovis, CA	Carpenter	1968-1969
Hopkins & Son Construction P.O. 5438 Fresno, CA	Clovis Fire Station, Administration Bldg., Armstrong and Nees Ave., Clovis, CA	Carpenter	1968-1969
Hopkins & Son Construction P.O. 5438 Fresno, CA	T.G. Schmeiser Co. Building, 3160 E. California St., Fresno, CA	Carpenter	1968
Hopkins & Son Construction P.O. 5438 Fresno, CA	Sheriff's Dept. Building, Fresno & M Sts., Fresno, CA	Carpenter	1969
Larsen Ratto Construction Co 820 E. Gettysburg Fresno, CA	Larsen Ratto Construction Co. Various locations throughout Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	Pacific Bell, Main Building, Van Ness & Tuolumne Sts., Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	Calwa Elementary School, 4303 E. Jensen St., Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	County of Fresno, Hall of Records Building, 2281 Tulare Street, Fresno, CA	Carpenter	1970

## EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Swift Poultry, Turkey Processing Plant, California St. Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	County of Fresno Building, 2348 Mariposa Street, Fresno, CA	Carpenter	1971
Hopkins & Son Construction P.O. 5438 Fresno, CA	Romaine School Administration Building, 1 <sup>st</sup> & Belmont Sts., Fresno, CA	Carpenter	1971
Conklin Construction Co., Kingsburg, CA	Bear Club Bar & Restaurant, Manning and Lackjack Sts, Reedley, CA	Carpenter	1972
Conklin Construction Co., Kingsburg, CA	Reedley College, 995 N. Reedley Ave, Reedley, CA	Carpenter	1972
Conklin Construction Co. Kingsburg, CA	Madera Jr. High School, Yosemite Ave., Madera CA	Carpenter	1972
Conklin Construction Co., Kingsburg, CA	Easton Alcoa Elementary School, 29551 Avenue 12, Madera, CA	Carpenter	1973
Conklin Construction Co., Kingsburg, CA	Jackson Insurance Co. Building, Kingsburg, CA	Carpenter	1973
Hopkins & Son Construction P.O. 5438 Fresno, CA	Braun-Percilis-Wagner Surveyors Building, Blackstone & Princeton Ave., Fresno, CA	Carpenter	1973
Hopkins & Son Construction P.O. 5438 Fresno, CA	C.H. Baker Shoe Store, Manchester Shopping Center, Fresno, CA	Carpenter	1973-1991
Hopkins & Son Construction P.O. 5438 Fresno, CA	Riverdale High School, Riverdale, CA	Carpenter	1974



## EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Northside Professional Building, 1313 E. Herndon St., Fresno, CA	Carpenter (periodically)	1974-1977
Hopkins & Son Construction P.O. 5438 Fresno, CA	French's Mustard Plant, Muscat & Chestnut Ave., Fresno, CA	Carpenter	1975
Hopkins & Son Construction P.O. 5438 Fresno, CA	California State University, Fresno, 5241 N. Maple St., Fresno, CA	Carpenter	1975
Hopkins & Son Construction P.O. 5438 Fresno, CA	Guarantee Savings & Loan Building, Shaw & Sixth Streets, Fresno, CA	Carpenter	1975
Hopkins & Son Construction P.O. 5438 Fresno, CA	Eddie's Pastry Shop, Manchester Shopping Center, Fresno, CA	Carpenter	1976
Hopkins & Son Construction P.O. 5438 Fresno, CA	Perry Boys Smorgy, Manchester Shopping Center, Fresno, CA	Carpenter	1976
Hopkins & Son Construction P.O. 5438 Fresno, CA	Jiffy Mart, Elm Avenue between Lincoln & Hopkins Sts., Fresno, CA	Carpenter	1976
Hopkins & Son Construction P.O. 5438 Fresno, CA	Guarantee Savings & Loan Building, Fresno and Fulton Streets, Fresno, CA	Carpenter	1976
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno Equipment Co. Building, 4288 S. Bagly Avenue, Fresno, CA	Carpenter	1977
Hopkins & Son Construction P.O. 5438 Fresno, CA	Washington Elementary School, 1420 2 <sup>nd</sup> and Bauder Sts., Selma, CA	Carpenter	1977
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fire Station No. 12, Marks and Acacia Sts., Fresno, CA	Carpenter	1977

EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	City of Fresno Waste Water Treatment Plant, 5607 W. Jensen St., Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Guarantee Savings & Loan Building, Miniwana and Shaw Sts., Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Bo Won Association Building, 9342 F Street, Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno Air Terminal, Lounge, Kitty Hawk Restaurant, Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Selma Police Station, Selma, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Selma City Hall Building, Selma, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Valley Pipe Supply Co. Building 801 Santa Clara St., Fresno, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fire Station No. 7, Cherry Ave., Fresno, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Heartland Elementary (aka Jefferson Elementary) Silvia & Thompson Sts., Selma, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Lloyd's Bank, Shaw Avenue, Fresno, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	American Transfer Co. Bldg., 2810 E. Jensen St., Fresno, CA	Carpenter	1979

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<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Long's Drug Store, Manchester Shopping Center, Fresno, CA	Carpenter	1979-1980
Hopkins & Son Construction P.O. 5438 Fresno, CA	Container Corporation of America Building, 2525 S. Sunland St., Fresno, CA	Carpenter	1980
Hopkins & Son Construction P.O. 5438 Fresno, CA	Pacific Bell Building, 334 DeWitt Avenue, Clovis, CA	Carpenter	1980
Hopkins & Son Construction P.O. 5438 Fresno, CA	Hopkins & Son Construction, Fresno, CA, various locations in and throughout Fresno, CA and northern CA	Carpenter	1980- 2/2002

PARA OCCUPATIONAL EXPOSURE:

Decedent recalled working with his father, William Hopkins, deceased. Decedent worked on the new construction and demolition of various commercial buildings, including but not limited to: firehouses; shopping centers; schools; office buildings; bank buildings; restaurants; and public utility buildings. Decedent's exposure (and secondary exposure from his father's work clothes) to asbestos and asbestos-containing products occurred at various locations inside the State of California, including plaintiffs family residence located at 5774 S. Elm Street, Fresno, California.

Decedent's exposure to asbestos and asbestos-containing products caused severe and permanent injury to the decedent, including, but not limited to breathing difficulties, asbestosis, lung and/or other cancer, mesothelioma, and/or other lung damage. Decedent was diagnosed with mesothelioma on or about February 2002.

Decedent stopped working on February 19, 2002, due to his mesothelioma.

**Exhibit B-2**

CASE NUMBER: CGC-06-450944 MARLENE HOPKINS et al VS. PLANT INSULATION COMPAN

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: SEP-08-2006**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 212 (g)(1) requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 3)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876


**Exhibit B-3**

APR-07-2006(FRI) 15:49

Legal

P.002/003

FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURTPOS-010  
06 APR 10 AM 10:48  
GORDON PARK LI. CLERKBY:   
DEPUTY CLERK

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jean L. Bertrand, 083250 MORGENSTEIN & JUBELIRER One Market Plaza 32nd Floor San Francisco, CA 94105 TELEPHONE NO.: (415) 901-8700 ATTORNEY FOR (Name): Plaintiff		POS-010 06 APR 10 AM 10:48 GORDON PARK LI. CLERK BY:  DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102		
PLAINTIFF/PETITIONER: Marlene Hopkins, et al. DEFENDANT/RESPONDENT: Plant Insulation Company, et al.		CASE NUMBER CGC06450944
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.: 2914.1 WJB

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons, Hopkins v. Plant Insulation Co. Complaint, Case Management and ADR information
3. a. Party served: Sullivan & Cromwell LLP
  - b. Person Served: Robert A. Sacks - Person authorized to accept service of process
4. Address where the party was served: 1888 Century Park East  
Los Angeles, CA 90067
5. I served the party
  - b. by substituted service. On (date): April 6, 2006 at (time): 4:20 pm I left the documents listed in Item 2 with or in the presence of: Adam McFaden-Person in charge
    - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (4) A declaration of mailing is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
  - c. on behalf of:  
Sullivan & Cromwell LLP  
under: Other: Limited Liability Partnership
7. Person who served papers
  - a. Name: John Aldana
  - b. Address: One Legal, Inc. - 132-Marin  
504 Redwood Blvd #223  
Novato, CA 94947
  - c. Telephone number: 415-491-0606
  - d. The fee for service was: \$ 69.00
  - e. I am:
    - (3) registered California process server.
      - (i) Employee or independent contractor.
      - (ii) Registration No.: 5261
      - (iii) County: Los Angeles
8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: April 7, 2006

John Aldana

(NAME OF PERSON WHO SERVED PAPERS)

  
(SIGNATURE)Form Adopted for Mandatory Use  
Judicial Council of California POS-010  
(Rev. July 1, 2004)

Code of Civil Procedure, § 417.10

PROOF OF SERVICE OF SUMMONS

FF# 6618603

10331860.01 - 4/7/2006 5:22:29 PM

BY FAX

APR-07-2006(FRI) 15:49

Legal

P. 003/003

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Jean L. Bertrand, 083250 MORGENSTEIN & JUBELIRER One Market Plaza 32nd Floor San Francisco, CA 94105		TELEPHONE NO.: (415) 901-8700	FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No. 2914.1 WJB	
Insert name of court, judicial district or branch court, if any: Superior Court of San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102			
PLAINTIFF: Marlene Hopkins, et al.			
DEFENDANT: Plant Insulation Company, et al.			
PROOF OF SERVICE BY MAIL			CASE NUMBER: CGC06450944

I am a citizen of the United States, over the age of 18 and not a party to the within action. My business address is 504 Redwood Blvd #223, Novato, CA 94947.  
On April 7, 2006, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCIV.P 4(d)(1) was made, I mailed copies of the:

Summons, Hopkins v. Plant Insulation Co. Complaint, Case Management and ADR information

to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Sullivan & Cromwell LLP  
Robert A. Sacks  
1888 Century Park East  
Los Angeles, CA 90067

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

\$ 69.00

Maria Oung  
One Legal, Inc.  
504 Redwood Blvd #223  
Novato, CA 94947

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on April 7, 2006 at Los Angeles, California.

  
\_\_\_\_\_  
Maria Oung

10331850.61 - 4/7/2006 5:22:29 PM

FF# 6618603



**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

PLANT INSULATION COMPANY; UNIROYAL HOLDING, INC.; IMPERIAL TOBACCO CANADA LIMITED; SULLIVAN & CROMWELL LLP; and DOES 1 through 100.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARLENE HOPKINS, Individually, as Wrongful Death Heir, and as Successor-in-Interest to NORMAN HOPKINS, JR., Deceased; and MICHELLE HOPKINS, and MICHAEL HOPKINS, as Legal Heirs of NORMAN HOPKINS, Deceased, and THE FLINTKOTE COMPANY,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco County Superior Court  
400 McAllister Street

San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso):

**0606450944**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean L. Bertrand (CSB 083250)

415.901.8700

415.901.8701

MORGENSTEIN & JUBELIRER LLP

One Market, Spear Street Tower, 32nd Floor

San Francisco, CA 94105

DATE:

**Gordon Park**

Clerk, by

(Secretario)

**Jun Pano**

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):



**Exhibit B-4**

ORIGINAL

MORGENSTEIN & JUBELIRER LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

1 ALAN R. BRAYTON (State Bar No. 073685)  
2 GILBERT L. PURCELL (State Bar No. 113603)  
3 DAVID R. DONADIO (State Bar No. 154436)  
4 BRAYTON PURCELL, LLP  
5 222 Rush Landing Road  
6 P. O. Box 6169  
7 Novato, CA 94948-6269  
8 Telephone: (415) 898-1555

9 Attorneys for Plaintiffs  
10 Marlene Hopkins, Michelle Hopkins, and Michael Hopkins

11 STEPHEN M. SNYDER (State Bar No. 054598)  
12 JAMES L. MILLER (State Bar No. 071958)  
13 SNYDER MILLER & ORTON LLP  
14 111 Sutter Street, Suite 1950  
15 San Francisco, CA 94104  
16 Telephone: (415) 962-4400  
17 Facsimile: (415) 962-4401

18 Attorneys for Plaintiff  
19 The Flintkote Company

20 (Additional Counsel Listed on Signature Page)

21 SUPERIOR COURT OF CALIFORNIA

22 COUNTY OF SAN FRANCISCO

23 MARLENE HOPKINS, Individually, as  
24 Wrongful Death Heir, and as Successor-in-  
25 Interest to NORMAN HOPKINS, JR.,  
26 Deceased; and MICHELLE HOPKINS, and  
27 MICHAEL HOPKINS, as Legal Heirs of  
28 NORMAN HOPKINS, Deceased, and THE  
29 FLINTKOTE COMPANY,

30 Plaintiffs,

31 v.

32 PLANT INSULATION COMPANY;  
33 UNIROYAL HOLDING, INC.; IMPERIAL  
34 TOBACCO CANADA LIMITED; SULLIVAN  
35 & CROMWELL LLP; and DOES 1 through  
36 100,

37 Defendants.

Case No.: CGC06450944

APPLICATION FOR DESIGNATION OF  
COMPLEX LITIGATION

[C.R.C. 1800 and General Order Re:  
Procedure for Approval of Complex  
Litigation Designation]

**FILED**  
San Francisco County Superior Court  
APR 14 2006  
BY: GORDON PARK-LI, Clerk  
Deputy Clerk

Pursuant to California Rule of Court 1800 and the Court's General Order Re: Procedure for Approval of Complex Litigation Designation, plaintiffs Marlene, Michelle and Michael Hopkins (the "Hopkins family") and The Flintkote Company ("Flintkote") request that this case be designated complex<sup>1</sup>.

**THE COURT SHOULD APPROVE A COMPLEX DESIGNATION FOR THIS CASE**

This is a complicated case with two primary and interrelated claims: to recover (with interest) over \$500 million in corporate dividends declared by Flintkote in favor of its ultimate parent, now known as Imperial Tobacco Canada Limited ("Imperial Tobacco") and to establish Imperial Tobacco as the alter ego of Flintkote. These two primary claims are knit together factually and legally. They are expressed in sixteen causes of action against four defendants. (A true and correct copy of the Complaint and the Civil Case Cover Sheet are attached as Exhibit A.) The causes of action include: declaratory relief with respect to a written agreement by Imperial Tobacco (then known as Imasco Limited and referred to here as "Imasco") to return the corporate dividends under specified circumstances; for recovery of the dividends as illegally declared in favor of Imasco; for breach of fiduciary duty by Imasco; for legal malpractice against Sullivan & Cromwell, the attorneys who represented both Flintkote and Imasco in connection with the payment of the illegal dividends; constructive trust; restitution and alter ego claims

<sup>1</sup> A party must designate a case as "complex," to alert the Court that the action "requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties and counsel." C.R.C. 1800(a).

California Rule of Court 1800(b) directs courts, in determining whether a party's designation of a case as complex is appropriate, to consider several factors, including:

(1) Is the case likely to involve "[n]umerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve"?

(2) Will the case require "[m]anagement of a large number of witnesses or a substantial amount of documentary evidence"?

1 asserted in an asbestos-related wrongful death, loss of consortium and survival action  
2 brought by the Hopkins family.

3 The asbestos claims are factually interwoven with the dividend recovery and  
4 malpractice claims because wrongful activity with respect to the dividend payments to  
5 Imasco left Flintkote without the ability to pay its asbestos-related personal  
6 injury/wrongful death liabilities. Wrongful conduct by both Imasco and its lawyers,  
7 Sullivan & Cromwell, caused the payment of the dividends and that payment and  
8 associated misconduct are important factual components in plaintiffs' proof that Imperial  
9 Tobacco is the alter ego of Flintkote. Ultimately, having been stripped of the dividends,  
10 Flintkote filed a chapter 11 bankruptcy case, now pending in the United States  
11 Bankruptcy Court for the District of Delaware. Thus, the wrongful acts by defendants  
12 Imperial Tobacco and Sullivan & Cromwell, which caused Flintkote to transfer over half a  
13 billion dollars in cash to its former corporate parent, have left the Hopkins family (and all  
14 Flintkote asbestos claimants) without an adequate remedy against Flintkote.

15 Plaintiffs believe that this matter will require more than the usual amount of court  
16 oversight and supervision. Plaintiffs have named one of Canada's largest tobacco  
17 companies and a major international law firm as defendants, and recovery in excess of  
18 \$500 million is sought. Plaintiffs expect defendants to mount a vigorous defense that will  
19 entail significant initial motion practice and after that, protracted discovery. Witnesses  
20 number in the many dozens, and documents are voluminous. Flintkote's own document  
21 repository consists of approximately 1500 bankers' boxes. Plaintiffs expect that the  
22 volume of defendants' documents, particularly Imperial Tobacco's and Sullivan &  
23 Cromwell's, will also be significant.

24 For all of the above reasons, plaintiffs request that the Court approve the  
25 designation as complex. If there is additional information that the Court wishes to  
26 consider before assigning the case to a case management program, plaintiffs are  
27 prepared to provide it.

28 //

MORGENSTEIN & JUBELIRER LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

02914.00001  
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- 3 -

APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION

MORGENSTEIN & JUBELIRER LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

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Respectfully submitted,

DATED: APRIL 11, 2006

BRAYTON PURCELL LLP

By Alan R. Brayton  
Alan R. Brayton  
Attorneys for Plaintiffs  
Marlene Hopkins, Michelle Hopkins  
and Michael Hopkins

DATED: April 14, 2006

MORGENSTEIN & JUBELIRER LLP

By Wendy J. Berg for Jean Bertrand  
Jean L. Bertrand  
Attorneys for Plaintiff  
The Flintkote Company

Additional Counsel for Plaintiff The Flintkote Company:

Eliot S. Jubelirer (State Bar No. 061654)  
Jean L. Bertrand (State Bar No. 083250)  
MORGENSTEIN & JUBELIRER LLP  
One Market, Spear Street Tower, 32<sup>nd</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 901-8700

Alan Pedlar (State Br No. 72216)  
THE LAW OFFICE OF ALAN PEDLAR  
1112 Via Malibu  
Aptos, CA 95083  
Telephone: (831) 688-2667

Kelly C. Wooster (State Bar No. 41196)  
112 Rock Creek Court  
P. O. Box 62  
Copperopolis, CA 95228  
Telephone: (209) 785-2437

**EXHIBIT A**

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jean L. Bertrand (CSB 083250) Eliot S. Jubelirer (CSB 061654) MORGENSTEIN & JUBELIRER LLP One Market, Spear Street Tower, 32nd Floor San Francisco, CA 94105 TELEPHONE NO.: 415.901.8700 FAX NO.: 415.901.8701		FOR COURT USE ONLY  <b>ENDORSED FILED</b> <i>San Francisco County Superior Court</i>  <b>APR 05 2006</b>  <b>GORDON PARK-LI, Clerk</b> BY: <u>JUN P. PANELO</u> <i>Deputy Clerk</i>	
ATTORNEY FOR (Name): <u>Plaintiff MARLENE HOPKINS, et al.</u>			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:			
CASE NAME: <u>MARLENE HOPKINS, et al. v. PLANT INSULATION COMPANY, et al.</u>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: <u>CG 06450944</u>  JUDGE: DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) <b>Non-P/PI/D/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-P/PI/D/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	d. <input checked="" type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
--	---

3. Type of remedies sought (check all that apply):  
 a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive

4. Number of causes of action (specify): 16

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015).

Date: April 5, 2006  
 Jean L. Bertrand (CSB 083250) Jean L. Bertrand  
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



ENDORSED  
FILED  
San Francisco County Superior Court

APR 05 2006

GORDON PARK-LI, Clerk

BY: JUN P. PANELO  
Deputy Clerk

1 ALAN R. BRAYTON (State Bar No. 073685)  
2 GILBERT L. PURCELL (State Bar No. 113603)  
3 DAVID R. DONADIO (State Bar No. 154436)  
4 BRAYTON PURCELL, LLP  
222 Rush Landing Road  
P.O. Box 6169  
Novato, CA 94948-6169  
Telephone (415) 898-1555

5 Attorneys for Plaintiffs  
6 Marlene Hopkins, Michelle Hopkins, and Michael Hopkins

7 STEPHEN M. SNYDER (State Bar No. 054598)  
8 JAMES L. MILLER (State Bar No. 071958)  
9 SNYDER MILLER & ORTON LLP  
111 Sutter Street, Suite 1950  
San Francisco, CA 94104  
Telephone: (415) 962-4400  
Facsimile: (415) 962-4401

10 Attorneys for Plaintiff  
11 The Flintkote Company  
12 (Additional Counsel Listed On Signature Page)

CASE MANAGEMENT CONFERENCE SET

SEP 08 2006 - 9 00 AM

DEPARTMENT 212

14 SUPERIOR COURT OF CALIFORNIA (UNLIMITED JURISDICTION)

15 COUNTY OF SAN FRANCISCO

16  
17 MARLENE HOPKINS, Individually, as  
18 Wrongful Death Heir, and as Successor-in-  
Interest to NORMAN HOPKINS, JR.,  
19 Deceased; and MICHELLE HOPKINS, and  
MICHAEL HOPKINS, as Legal Heirs of  
20 NORMAN HOPKINS, Deceased, and THE  
FLINTKOTE COMPANY,

21 Plaintiffs,

22 vs.

23 PLANT INSULATION COMPANY;  
24 UNIROYAL HOLDING, INC.; IMPERIAL  
25 TOBACCO CANADA LIMITED;  
SULLIVAN & CROMWELL LLP; and  
26 DOES 1 through 100,

27 Defendants.

Case No.

00200450944

COMPLAINT FOR DAMAGES AND  
RELIEF AGAINST ALTER EGO, FOR  
RECOVERY OF DIVIDENDS, FOR  
RECOVERY OF FRAUDULENT  
TRANSFERS, FOR DAMAGES BY REASON  
OF BREACH OF FIDUCIARY DUTY, FOR  
DAMAGES FOR BREACH OF DUTY AND  
NEGLIGENCE, TO ENFORCE  
CONSTRUCTIVE TRUST, FOR  
RESTITUTION, AND FOR DECLARATORY  
RELIEF.

Snyder  
Miller  
& Orton  
LLP

1  
COMPLAINT

1 Plaintiffs MARLENE HOPKINS, MICHELLE HOPKINS, and MICHAEL HOPKINS and  
2 THE FLINTKOTE COMPANY allege:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiffs Marlene Hopkins, Michelle Hopkins, and Michael Hopkins (collectively,  
5 "Hopkins") bring this action as the result of the wrongful death of Norman Hopkins ("Decedent"),  
6 who was the husband of Marlene Hopkins and father of Michelle and Michael Hopkins. Marlene  
7 Hopkins is successor in interest to Decedent under California Code of Civil Procedure section  
8 377.11. Plaintiffs Hopkins are entitled to bring this action pursuant to California Code of Civil  
9 Procedure sections 377.30 and 377.60. Plaintiffs Hopkins are the legal heirs of Decedent. Decedent  
10 contracted mesothelioma and died on September 27, 2005, as the result of exposure to asbestos  
11 containing products manufactured and/or distributed by defendant Imperial Tobacco, an alter ego of  
12 Flintkote, and by defendants Plant Insulation Company and Uniroyal Holding, Inc.

13 2. Plaintiff The Flintkote Company ("Flintkote") is, and at all relevant times, has been a  
14 corporation organized and existing under the laws of the State of Delaware, with a principal place of  
15 business in San Francisco, California, qualified to do and doing business in California. For many  
16 years, Flintkote manufactured and sold asbestos-containing products. Because of the number of  
17 asbestos personal injury and death claims against it, numbering over 157,000, Flintkote filed a case  
18 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States  
19 Bankruptcy Court for the District of Delaware on May 1, 2004, Case No. 04-11300 (JKF) (the  
20 "Bankruptcy Case"), as a result of its asbestos-related personal injury liabilities. Flintkote is and  
21 remains the debtor and debtor-in-possession in that case.

22 3. Defendant Plant Insulation Company ("Plant") is a California corporation, with its  
23 principal place of business situated in the city and county of San Francisco.

24 4. Defendant Uniroyal Holding, Inc. ("Uniroyal") is a corporation, and is successor in  
25 interest to Uniroyal, Inc.

26 5. Defendant Imperial Tobacco Canada Limited ("Imperial Tobacco") is the major  
27 Canadian tobacco company. It is a Canadian corporation formerly known as Imasco Limited and will  
28 be referred to herein as "Imperial Tobacco" or "Imasco." Imperial Tobacco has manufactured

1 cigarettes and other tobacco products in Canada for many years. Its brands include "Players" and "du  
2 Maurier" cigarettes. Imperial Tobacco has sold and distributed its products in the United States,  
3 including California, for many years.

4 6. Defendant Sullivan & Cromwell LLP ("S&C") is a partnership and a law firm. S&C  
5 maintains offices in California, among other places. S&C is a citizen of California, in that there are  
6 S&C partners who reside in and are citizens of California.

7 7. Plaintiffs are ignorant of the true names and capacities of defendants sued under the  
8 fictitious names Doe 1 through Doe 100, inclusive, and pray that when they are discovered the  
9 complaint may be amended to allege such names and capacities. Each of the fictitiously named  
10 defendants is responsible in some manner for the occurrences alleged hereafter.

11 8. Jurisdiction in the Superior Court as a case of unlimited jurisdiction is proper because  
12 the monetary causes of action all arise under state law, the demand exceeds \$25,000, and the action  
13 seeks in part declaratory relief under California Code of Civil Procedure section 1060. Flintkote is  
14 authorized by virtue of the Bankruptcy Code to bring certain of the causes of action, all of which  
15 arise under state law.

16 9. Venue in the County of San Francisco is proper because defendants Imperial Tobacco  
17 and S&C have no residence in California and can be sued in any county in California, and their  
18 liability arises from conduct that occurred in San Francisco, and because defendant Plant has its  
19 principal place of business situated in San Francisco.

20 10. Plaintiffs Hopkins have the right to assert an alter ego claim against Imperial Tobacco  
21 directly, and/or by reason of the abandonment and/or transfer by Flintkote to Hopkins of the right, to  
22 the extent of losses held by them. The alter ego claims by Hopkins and Flintkote depend upon the  
23 same set of facts. Pursuing such claims against a substantial well-financed defendant is difficult and  
24 expensive, so that it is economically not practical for a single individual to pursue them alone.  
25 Accordingly, Flintkote and plaintiffs Hopkins have agreed to bring the alter ego claims together as  
26 plaintiffs and to cooperate in prosecuting them. Plaintiffs Hopkins make no claim against S&C.

27 **FACTS**

28 11. Flintkote manufactured and sold asbestos containing products for many years,

1 including vinyl asbestos floor tile, asbestos cement pipe and many other products. Flintkote, through  
 2 its wholly owned subsidiary Flinkote Mines, Inc. mined asbestos in Quebec, Canada from 1946  
 3 through approximately 1970. Beginning in or about 1972, Flintkote, along with many other  
 4 companies began to be named as a defendant in numerous lawsuits brought by persons exposed to  
 5 asbestos contained in its products who suffered from a variety of asbestos induced diseases. The  
 6 number of asbestos cases filed against Flintkote and the other companies increased over time.

7 12. In August 1982 Johns Manville Corporation and twenty of its subsidiaries and  
 8 affiliates filed for bankruptcy and claimed they were forced into bankruptcy by the asbestos claims  
 9 filed against it. The bankruptcy filing was major news as Johns Manville was, absent the asbestos  
 10 litigation, a large and profitable American company. Other companies named as defendants in the  
 11 asbestos litigation were also forced into bankruptcy as a result of the litigation, including:

<u>Company</u>	<u>Date of Filing Bankruptcy</u>
UNR Industries	July 19, 1982
Amatex Corporation	November 1, 1982
Forty-Eight Insulations, Inc.	April 19, 1985
Standard Insulation	August 4, 1986
Nicolet	July 17, 1987

15 13. A number of defendants regularly sued in the asbestos litigation banded together in the  
 16 early 1980's and sought to settle disputes with their insurers where possible and establish a facility  
 17 that would provide an efficient joint defense to members of the group. The discussions were  
 18 mediated by Dean Harry Wellington of the Yale Law School. The participants became known as the  
 19 "Wellington Group." By June 1985 they had signed an agreement and had begun to operate as the  
 20 Asbestos Claims Facility ("ACF").

21 14. Flintkote was a member of the ACF and, for a while, asbestos cases against it were  
 22 defended and settled or tried by lawyers selected by the Asbestos Claims Facility. The ACF defense  
 23 arrangements were initially advantageous to Flintkote as they allowed the company to defend  
 24 asbestos personal injury cases at shared cost and thus allowed it to conserve insurance resources that  
 25 would be more quickly consumed if it was required to defend cases on its own. The ACF operated  
 26 through late 1988, at which point it dissolved as a result of disagreements among its members, e.g., as  
 27 to appropriate defense strategies and as to how costs should be allocated among participants.  
 28

1           15. Tobacco companies whose cigarettes were implicated in the rising tide of asbestos-  
 2 related disease, such as Imasco and its counsel S&C, by 1986 knew or had ready access to  
 3 information which pointed to the threatening scope of the asbestos litigation to follow. That  
 4 information included:

- 5           • The aforementioned bankruptcies of Johns-Manville Corporation and other asbestos  
 6 defendants, which increased the payment shares in the tort system of the surviving  
 7 companies;
- 8           • Numbers of claims filings were increasing and claims values were increasing;
- 9           • Diseases caused by asbestos exposure could have a latency period of decades, which  
 10 meant liabilities would extend far into the future;
- 11          • Commercial usage of asbestos in the United States continued to increase through the  
 12 1970's, with significant implications for future morbidity;
- 13          • Inability to extend the asbestos litigation to include significant responsible parties,  
 14 such as the United States Government and the tobacco companies, all of whom had  
 15 contributed to the diseases and injuries of asbestos victims;
- 16          • Unmistakable signals from casualty insurers that they could not be counted on by  
 17 defendant companies in the face of ever-increasing demands, with signs from some  
 18 that they would not survive. By mid-1987, two of Flintkote's insurers had become  
 19 insolvent, and not until the late 1980's and into the early 1990's did Flintkote reach  
 20 agreements as to coverage with only 60% of its insurers;
- 21          • Substantial disagreements among ACF members that weakened the effectiveness of  
 22 the ACF and hastened its demise. These disagreements were apparent as early as  
 23 1986. There were clear indicators that members were going to leave the ACF, and  
 24 seven did so in 1987. Persons knowledgeable about the operations and functioning of  
 25 the ACF, such as Imasco and S&C, knew or should have known in 1986 that the ACF  
 26 would not continue to operate indefinitely as originally agreed upon and also knew or  
 27 should have known that disintegration of the ACF was likely in the foreseeable future.

28          16. Imasco was quite familiar with the American asbestos litigation. It followed and

1 monitored that litigation for a variety of reasons, including that it knew there was a synergistic or  
2 combinative effect which produced increased disease rates in persons who smoked its tobacco  
3 products and who were also exposed to asbestos. Consequently Imasco understood that the litigation  
4 posed risks to corporate and insurer solvency.

5 17. In the 1980s, Imasco was engaged in a program of corporate diversification.  
6 Specifically, it was seeking to acquire non-tobacco businesses. One target of Imasco's diversification  
7 program in 1986 was a Canadian financial business Canada Trustco Mortgage Company ("Canada  
8 Trustco"). But, Canada Trustco had been acquired by another Canadian company, Genstar  
9 Corporation. So, in order to get control of Canada Trustco, Imasco, operating through a corporate  
10 subsidiary, Imasco Enterprises, Inc. ("IEI"), commenced a hostile purchase of all shares of Genstar  
11 Corporation ("Genstar"). At the time Genstar had a number of businesses and subsidiary  
12 corporations, including several in the United States. Genstar was Flintkote's ultimate parent  
13 company, with a number of wholly owned subsidiary companies between Genstar and Flintkote.  
14 Imasco's stated objective in the purchase was to acquire Genstar's 98.9% holding of Canada Trustco  
15 common shares.

16 18. From the outset, Imasco's strategy was to use the value of Genstar's assets, other than  
17 Canada Trustco, to finance the purchase of Canada Trustco. The strategy therefore involved  
18 restructuring and selling off most of Genstar's assets except Canada Trustco, so as to acquire Canada  
19 Trustco at an attractive price, using the liquidation of Genstar's assets, including Flintkote, to pay for  
20 the hostile takeover.

21 19. Imasco acquired Genstar in August 1986. Then, as it had planned to do, it set about  
22 selling most of Genstar's assets and businesses (other than Canada Trustco). To implement this  
23 scheme, Imasco dominated and controlled Flintkote and caused it to do its bidding. First it required  
24 Flintkote to isolate its asbestos liabilities from its major assets by creating four subsidiaries and then  
25 transferring Flintkote's valuable operating assets to them. Then, Imasco caused Flintkote to sell each  
26 of the subsidiaries to which Flintkote assets had been transferred; as well as two subsidiaries that had  
27 been created previously. Those sales were made to third parties for cash.

28 20. Gross proceeds from the sales of the Flintkote assets were approximately

1 \$663,500,000 U.S., plus \$100,000,000 Canadian. The sales were completed by February 27, 1987.  
2 These asset transfers and sales were overseen by Imasco personnel working in San Francisco,  
3 California. Imasco assigned S&C to provide legal advice to Flintkote in order to implement the  
4 planned liquidation and sale of the Flintkote assets. At Imasco's direction, S&C began representing  
5 Flintkote and gave it legal advice in connection with the asset liquidation. S&C continued to  
6 represent its original client Imasco in connection with the liquidation throughout the process and  
7 thereafter. Flintkote did not give informed written consent to S&C representing both Flintkote and  
8 Imasco.

9 21. After these transactions, Flintkote's valuable operating businesses were gone. Their  
10 profits, cash flow, and credit were no longer available to pay the asbestos claims against Flintkote.  
11 Instead, Flintkote was left with only cash from the forced sales of its assets, together with insurance,  
12 much of which was contested by the insurers who had written the policies. The cash and insurance  
13 were all that Flintkote had with which to pay settlements and judgments in the asbestos litigation.  
14 However, the final step in Imasco's scheme to use Genstar's assets to pay for its acquisition of  
15 Canada Trustco was to transfer most of Flintkote's cash to Imasco, thereby reimbursing it for monies  
16 it expended in the hostile takeover of Genstar. Imasco decided to transfer the cash out of Flintkote  
17 and to itself (through subsidiary corporations which it owned, controlled, and dominated) by cash  
18 dividends to be paid out by Flintkote.

19 22. The first transfer was accomplished through a dividend of \$170,200,000 declared in  
20 San Francisco, California, by Flintkote's board of directors on December 19, 1986. The dividend  
21 was to be paid on December 30, 1986. The money went to Imasco, the sole ultimate parent  
22 corporation of Flintkote.

23 23. At the time of the December 1986 dividend, S&C were and had been outside counsel  
24 to Imasco, which ultimately would receive the dividend, and represented Imasco in connection with  
25 the acquisition of Genstar and the liquidation of Flintkote. At the same time, S&C represented  
26 Flintkote in connection with the liquidation of its assets and in connection with the cash dividends  
27 that Imasco desired to receive from Flintkote. In connection with the 1986 dividend, S&C advised  
28 Flintkote that S&C had retained consultants to report on Flintkote's potential asbestos liabilities. It



1 advised the Flintkote board that it had received preliminary advice from the consultant, and that there  
2 was a draft of the consultant's report. S&C advised the board that it could reasonably go forward and  
3 declare the dividend. S&C told the board that it did not believe the consultant's final report would  
4 alter its conclusions. S&C concurred in a presentation by Flintkote's general counsel regarding  
5 Flintkote's current and potential liabilities. The Flintkote directors in 1986 and 1987 were not  
6 knowledgeable about the asbestos litigation and relied upon S&C and its consultants for advice about  
7 it. The board minutes do not reflect any benefit to Flintkote or its creditors as a result of the proposed  
8 dividend transaction. Imasco paid the consultants for their services, but the board minutes do not  
9 show that the board was informed of that fact.

10 24. Stating that it was doing so in accordance with previous undertakings and "as an  
11 inducement" to each of Flintkote's officers and directors "to continue to fulfill his responsibilities" as  
12 such, Imasco had issued a letter on December 18, 1986, undertaking to indemnify and hold each of  
13 them harmless against any and all actions, suits or claims arising out of their actions, omissions or  
14 conduct as officers or directors of Flintkote at any time since Imasco acquired control of Genstar.

15 25. Imasco and S&C participated by telephone at the December 19, 1986, Flintkote board  
16 meeting and said to Flintkote that it would undertake to restore any dividends to Flintkote if a court  
17 determined them to be improperly declared. On December 18, 1986, Imasco sent a letter confirming  
18 that in addition to the December 18, 1986, indemnity letter, Imasco would enter into an undertaking  
19 to replace funds to Flintkote to the extent required by an appropriate judicial body.

20 26. S&C's legal advice and Imasco's domination and control over Flintkote caused the  
21 dividend to be paid.

22 27. The second transfer of money from Flintkote, ultimately to Imasco, was by dividend  
23 of \$355,000,000 declared by Flintkote at a board meeting at San Francisco, California, on July 22,  
24 1987. It was to be paid on August 31, 1987 or before. The money went to Imasco through subsidiary  
25 corporations and entities that it controlled and dominated.

26 28. At the time of the July 1987 dividend, S&C were still outside legal counsel to Imasco  
27 and were representing Imasco, including with respect to Flintkote-related issues, such as the  
28 consequences and potential liabilities attached to receipt of cash via dividend from Flintkote in the



1 face of Flintkote's asbestos liabilities. At the same time, S&C was representing Flintkote on those  
 2 same issues, and on the issue of the director's liability in connection with declaring dividends to  
 3 Imasco in the face of Flintkote's asbestos liabilities. On July 22, 1987, S&C as well as Imasco were  
 4 present by telephone at the Flintkote board meeting in San Francisco. S&C had prepared a legal  
 5 memorandum addressed to Flintkote. During the meeting, the memorandum was presented to the  
 6 board, as was an overview of a study by Resource Planning Corporation ("RPC"), the consultant  
 7 S&C had retained and whose preliminary report was used by S&C in connection with the December  
 8 1986 board meeting.

9 29. The board minutes of the July 1987 meeting reflect that after payment of the  
 10 dividends, Flintkote would have left retained earnings and paid-in capital of approximately  
 11 \$80,000,000, but the estimated potential exposure from environmental cleanup was not to exceed  
 12 \$20,000,000, and the estimated potential asbestos property damage (not personal injury) exposure  
 13 taken from the RPC study was \$42,000,000.

14 30. In the July 22, 1987 board meeting, the board members were told that Imasco would  
 15 undertake to restore dividend monies to the extent the declared dividends were deemed legally  
 16 improper and necessary to satisfy unpaid judgment creditors of Flintkote. Imasco promised to supply  
 17 a writing memorializing the understanding. After the meeting, Imasco issued a letter dated July 27,  
 18 1987 to Flintkote undertaking to repay to Flintkote any amounts (up to the full amount of dividends  
 19 declared while Imasco was an indirect owner of Flintkote) finally determined by a court of competent  
 20 jurisdiction to be due to Flintkote creditors but that cannot be satisfied out of Flintkote's assets  
 21 because of dividends finally determined to have been improperly paid during Imasco's indirect  
 22 ownership of Flintkote. A copy of the July 27, 1987 letter ("Dividend Repayment Contract") is  
 23 attached as Exhibit A and incorporated by reference.

24 31. The S&C legal memorandum and the RPC study, both supplied by Imasco's and  
 25 Flintkote's lawyers S&C, and Imasco's domination and control over Flintkote, caused the dividend to  
 26 be paid, as was Imasco's plan from the time it took over Genstar.

27 32. S&C's relationship with Imasco supplied reason to structure S&C's advice so as to  
 28 ensure that Flintkote would pay the dividends. The S&C memorandum contained substantial errors,

1 omissions, and misleading statements, all of which tilted the conclusions in the memorandum in favor  
2 of Flintkote's payment of these dividends, including the following.

3 33. The S&C memorandum is dated June 25, 1987, and addressed to Flintkote. However,  
4 it actually spoke to Flintkote's directors as it is focused on whether the directors of Flintkote could  
5 declare the dividend yet escape personal liability for doing so. The memorandum is vague and  
6 indefinite as to Flintkote's obligations as a corporation.

7 34. The S&C memorandum contains legal analysis, including discussion of California  
8 law. In that connection, S&C advised Flintkote that California had adopted the Uniform Fraudulent  
9 Conveyance Act. S&C wrote that a conveyance could be set aside if the debtor would be rendered  
10 insolvent by the transfer, and that insolvency is defined in terms of a person's probable liability on  
11 existing debts as they became absolute and matured. S&C advised Flintkote that it was unclear  
12 whether tort claims that had not yet matured – because, for example, an asbestos-related disease had  
13 not yet manifested itself – were considered existing debts. That advice misapprehended the  
14 controlling definitions, which included as a "debt" any legal liability, whether matured or unmatured,  
15 fixed or contingent. S&C also did not alert Flintkote that under California law, as well as in other  
16 jurisdictions that adopted the Uniform Fraudulent Conveyance Act, a voluntary conveyance made  
17 without fair consideration, where there is existing indebtedness, is presumptively fraudulent, and it  
18 would then be incumbent upon the grantee (here, Imasco) to prove the conveyor (here, Flintkote) was  
19 solvent. See *Neumeyer v. Crown Funding Corp.*, 56 Cal.App.3d 178, 128 Cal.Rptr. 366 (1976).

20 35. S&C failed to advise Flintkote that California in 1986, effective January 1, 1987,  
21 changed the law and adopted a version of the Uniform Fraudulent Transfer Act. The new law made a  
22 transfer fraudulent as to present or future claims if the debtor reasonably should have believed he  
23 would incur debts beyond his ability to pay as they became due. The new statute therefore  
24 incorporated an objective test specifically looking to the incurring of future debts. This test was in  
25 addition to rules making fraudulent those transfers without fair consideration where the debtor was  
26 insolvent or became insolvent as a result of the transfer, or was about to engage in a business-for  
27 which its remaining assets were unreasonably small in relation to the business.

28 36. The RPC report is dated June 23, 1987, and reflects that it was prepared for S&C. The

1 RPC report stated that RPC had been retained by S&C to "estimate" the potential costs of pending  
 2 and possible future asbestos-related property damage claims against Flintkote, but only "to consider"  
 3 asbestos personal injury claims. RPC devoted cursory treatment to Flintkote's asbestos-related  
 4 personal injury claims. RPC used a figure of \$9.2 million per year, and to 2001 only, for asbestos  
 5 personal injury claims. The RPC report thus was based on an assumption, known to be questionable  
 6 by Imasco and S&C, that the ACF would continue to operate with no significant changes in cost to  
 7 Flintkote for 14 years. S&C assured Flintkote that directors were entitled to rely upon statements in  
 8 an appraisal by an appraiser selected by the board. Although it was not an appraisal under Delaware  
 9 law, although it had serious shortcomings in it with respect to Flintkote's asbestos personal injury  
 10 liabilities, and although the Flintkote board did not select RPC, S&C advised the board that the RPC  
 11 report ought to be considered an "appraisal" of asbestos-related liabilities upon which the directors  
 12 could rely. Imasco and S&C did not advise the directors to seek an independent expert analysis  
 13 regarding Flintkote's asbestos-related personal injury liabilities from a consultant or to retain  
 14 independent counsel without a conflict of interest.

15 37. None of Imasco, S&C, or the RPC report advised Flintkote's board of the facts and  
 16 developments described in paragraph 15, above, relevant to considering Flintkote's future asbestos-  
 17 related personal injury liabilities.

18 38. S&C labored under a conflict of interest when it undertook to represent and advise  
 19 Flintkote while still representing Imasco. Flintkote, a company facing substantial and increasing  
 20 asbestos-related claims, was obliged to consider and evaluate the interests of existing and future  
 21 creditors before paying out \$525,200,000 in dividends. In contrast, Imasco had every interest in  
 22 obtaining the \$525,200,000 to pay for its Canada Trustco acquisition, as had been Imasco's plan all  
 23 along. S&C represented both Imasco and Flintkote, with plainly conflicting interests. The  
 24 declaration of the dividends was tainted by this conflict of interest, by the inadequate and misleading  
 25 legal advice provided by S&C and by the incomplete analysis in the RPC report and advice, which  
 26 was procured by S&C for the specific purpose of attempting to justify the legal propriety of the  
 27 dividends.

28 39. Imasco improperly caused the dividends to be paid by telling the Flintkote board:

- our lawyers, acting as your lawyers, together with their consultants, say you can do it;
- to induce you to pay us we agree to protect you if someone sues you; and
- if we are wrong about this and creditors are left unsatisfied and a court finally decides the dividends were improper, we will pay them back.

40. From the time Imasco acquired Genstar in August 1986, through September 29, 2003, Imasco held and maintained complete control over and dominated Flintkote through Imasco's indirect 100% ownership of Flintkote. Flintkote was in no position to assert claims against Imasco or to sue Imasco. S&C continued to act as an instrument of Imasco, guiding and giving legal advice to Flintkote, including with respect to the matters alleged herein, until September of 2003. Imasco's plan, which became Flintkote's plan by reason of Imasco's domination and control over Flintkote, and the continuing advice provided by S&C, was to use Flintkote to pay asbestos liabilities for as long as possible, and to attempt to keep Imasco and Flintkote separate for appearances sake, with the goal that when Flintkote ran out of money, no one would be able to recover the dividends or to fasten alter ego liability upon Imasco for Flintkote's asbestos-related claims. That Flintkote had been injured by wrongful acts leading to the dividends was inherently unknowable, depending upon expertise available only to sophisticated professionals such as S&C and RPC. S&C did not disclose to Flintkote that it had rights with respect to the dividends.

41. From and after the divestiture of its subsidiaries and payment of the dividends, Flintkote operated as an asbestos claims resolution facility. Imasco exercised its domination and control over Flintkote in part through its wholly-owned subsidiaries, Imasco Holdings, Inc. and Imasco Holdings Group, Inc. (collectively, "IHI"). IHI took its orders from Imasco. IHI attorneys were involved in the claim resolution process. Flintkote consistently obtained releases for its parent companies, including Imasco, in settlements with asbestos claimants. Flintkote and IHI shared common officers and directors. Employees of Imasco or IHI were involved in management of Flintkote. S&C continued to advise Imasco or IHI and Flintkote on what should be done with Flintkote, with particular attention to how to avoid alter ego liability for Flintkote's asbestos-related liabilities. Flintkote handled its own asbestos liabilities, rather than join the Center for Claims Resolution as many asbestos defendants had done after the Asbestos Claims Facility disbanded, and

1 Imasco therefore maintained control over the handling of the claims. Following the dividends, as a  
 2 claim-paying and insurance-pursuing business, Flintkote's reliance on counsel was critical. Flintkote  
 3 continued to consult S&C, Imasco's outside counsel, on asbestos issues, and IHI legal personnel were  
 4 involved in overseeing Flintkote's legal strategies because of the importance of monitoring the  
 5 critical issue of asbestos liability. The goals of Imasco throughout were to forestall any liability to  
 6 repay the dividend and to confine the asbestos-related liabilities to Flintkote.

7 42. Imasco not only had dismantled all Flintkote's profitable businesses and sold them off,  
 8 it had taken and used the money to reimburse itself for funds it had expended for buying the one  
 9 business it did want, Genstar's Canada Trustco, a financial services company in Canada. After  
 10 Imasco took the \$525,200,000 in dividends, Flintkote's remaining assets were woefully insufficient  
 11 to satisfy its asbestos-related personal injury liabilities.

12 43. From and after the time of the Imasco hostile takeover, Flintkote did not file public  
 13 financial statements. It did not publicly disclose its true financial condition and the nature and extent  
 14 of its asbestos liabilities. Instead, Imasco, as Flintkote's ultimate parent corporation filed public  
 15 financial statements in Canada that purported to represent Flintkote's financial condition. Imasco  
 16 represented continuously that Flintkote's asbestos liabilities were insignificant and unimportant.  
 17 Following the dividend paid in 1986, in its March 31, 1987, public financial statements, Imasco  
 18 represented, with respect to Flintkote's financial condition, that

19 [C]ertain of the unconsolidated subsidiaries acquired as part of the Genstar transaction are  
 20 subject to numerous claims and suits, some of which allege significant damage. In the opinion of  
 21 management, all such claims and suits are adequately covered by insurance, or are provided for in  
 22 the financial statements, or if not so covered or provided for, the results are not expected to  
 23 material affect the Corporation's financial condition.

24 Following the dividend paid in 1987, in its December 31, 1988, public financial statements, Imasco  
 25 repeated the foregoing statement. From the date of the payment of the first dividend in 1986 until  
 26 within a year of the filing of the Bankruptcy Case, Imasco's financial statements reflected Flintkote  
 27 as having a substantial positive net worth. The financial disclosures by Imasco were insufficient to  
 28 alert a reader or creditor to the fact that the dividends had been made while Flintkote was insolvent or

1 had rendered Flintkote insolvent, had caused it to be unable to meet its asbestos liabilities as they  
 2 became due and were made in violation of California and other law, including California's Uniform  
 3 Fraudulent Transfer Act and Delaware law respecting declaration of dividends, thereby tolling any  
 4 applicable limitation period.

5 44. In 2003, S&C, acting as counsel to Flintkote, commissioned the first ever study of  
 6 Flintkote's asbestos-related personal injury liabilities, in this case by Chambers Associates, a  
 7 subsidiary of Navigant Consulting, Inc. ("Navigant"). Navigant issued a report dated August 19,  
 8 2003. The Navigant report estimated indemnity payments from 2003 onward to range from \$1.7422  
 9 billion to \$2.8139 billion, and total payments including defense costs to range from \$2.2746 billion to  
 10 \$3.4781 billion.

11 45. In September, 2003, the shares of Flintkote stock were transferred to a trust, and  
 12 Flintkote was no longer owned directly or indirectly by Imperial Tobacco.

#### 13 **FIRST CAUSE OF ACTION**

14 **(By Plaintiffs Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Negligence –  
 Wrongful Death)**

15 46. Plaintiffs Hopkins reallege and incorporate by reference each and all the allegations of  
 16 paragraphs 1 through 45, inclusive.

17 47. At all times herein mentioned, defendants Plant, Uniroyal, and Imperial Tobacco, an  
 18 alter ego of Flintkote, and each of them, were and are engaged in the business of researching,  
 19 manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, leasing, buying,  
 20 offering for sale, supplying, selling, inspecting, endorsing, testing, authorizing, approving, approving,  
 21 certifying, facilitating, warranting, rebranding, manufacturing for others, packaging, specifying,  
 22 requiring, mandating, or otherwise directing and/or facilitates the use of, or advertising of a certain  
 23 product, namely asbestos and other products containing asbestos.

24 48. At all times mentioned, said defendants, and each of them, singularly and jointly,  
 25 negligently, and carelessly researched, manufactured, fabricated, designed, modified, tested or failed  
 26 to test, abated or failed to abate, warned or failed to warn of the health hazards, labeled, assembled,  
 27 distributed, leased, bought, offered for sale, supplied, sold, inspected, endorsed, contracted for  
 28 installation, of, repaired, marketed, warranted, rebranded, manufactured for others, packaged and

1 advertised, a certain product, namely asbestos, and other products containing asbestos, in that said  
2 products caused personal injuries to users, consumers, workers, bystanders and others, including the  
3 Decedent herein and Decedent's father, William Hopkins, (hereinafter collectively called "exposed  
4 persons"), while being used in a manner that was reasonably foreseeable, thereby rendering said  
5 products hazardous, unsafe, and dangerous for use by "exposed persons."

6 49. Said defendants, and each of them, had a duty to exercise due care in the pursuance of  
7 the activities mentioned above and defendants, and each of them, breached said duty of due care.

8 50. Said defendants, and each of them, knew, or should have known, and intended that the  
9 aforementioned asbestos and products containing asbestos and related products and equipment,  
10 would be transported by truck, rail, ship, and other common carriers, that in the shipping process the  
11 product would break, crumble, or otherwise be damaged; and/or that such products would be used for  
12 insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other  
13 applications, including, but not limited to unpacking, preparing, suing, sawing, drilling, chipping,  
14 hammering, scraping, sanding, breaking, maintaining, inspecting, "rip-out", and other manipulation,  
15 resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or  
16 handling "exposed persons", including decedent herein, would use or be in proximity to and exposed  
17 to said asbestos fibers, which contaminated the packaging, products, environment, and clothing of  
18 persons working in proximity to said products, directly or through reentrainment.

19 51. Decedent has used, handled, or been otherwise exposed to asbestos and asbestos-  
20 containing products referred to herein in a manner that was reasonably foreseeable. Decedent's  
21 exposure to asbestos and asbestos-containing products, asbestos related injury, date of diagnosis, and  
22 employment status is, on current information and belief, as set forth at various locations and  
23 circumstances in Exhibit B, attached to this Complaint and incorporated by reference herein.

24 52. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease,  
25 cancer, and other serious diseases are caused by inhalation or ingestion of asbestos fibers without  
26 perceptible trauma and that said injury, damage, loss, or harm results from exposure to asbestos and  
27 asbestos-containing products over a period time.

28 53. Decedent suffered from a condition related to exposure of asbestos and asbestos-



July 27, 1987

Directors of  
The Flintkote Company

Inasco Limited  
4 Westmount Square  
Montreal, Canada  
H3Z 2S8

P.Q. Box 6800  
Montreal, Canada  
H3C 3A4

(514) 837 9111  
Cable: Telinasco  
Telex: 05 24178

Inasco Limited ("Inasco") hereby undertakes to repay to Flintkote any amounts (up to the full amount of dividends declared during the period in which Inasco has been the indirect owner of Flintkote) that are finally determined by a court of competent jurisdiction to be due to Flintkote creditors, including tort judgment creditors, but that cannot be satisfied out of the assets of Flintkote because of dividends finally determined to have been improperly paid during Inasco's indirect ownership of Flintkote. Repayment will be made after (i) entry of a final, unsatisfied judgment against Flintkote that cannot be satisfied from Flintkote assets, and (ii) entry of a final judgment against either Flintkote, its directors or Inasco on the basis that (a) the dividends in question were improperly paid, and (b) Flintkote would have been able to satisfy, at least in part, the creditor's judgment but for the payment of the improper dividends. For purposes of this undertaking, a judgment that can still be appealed or as to which an appeal is pending is not considered "final."

In the event the issue of the propriety of Flintkote dividends is raised in a suit against Flintkote or its directors, Flintkote and each director named in the suit shall give prompt notice to the General Counsel of Inasco that the issue has been raised and shall permit Inasco an opportunity to control the defense of that issue.

Very truly yours,

Inasco Limited

By: 

FTKT 017467  
CONFIDENTIAL



**EXHIBIT B**

EXHIBIT B

Decedent's exposure to asbestos and asbestos-containing products occurred at various locations inside the State of California, including but not limited to:

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Roosevelt High School, 4250 R. Tulare St., Fresno, CA	Carpenter	Summer 1950
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno High School, 1839 E. Echo St., Fresno, CA	Carpenter	Summer 1950
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fire Station No. 88, 5380 Tulare St., Fresno, CA	Carpenter	Summer 1951
Hopkins & Son Construction P.O. 5438 Fresno, CA	Reedley College, 995 N. Reedley Ave. Reedley, CA	Carpenter	Summer 1951
Hopkins & Son Construction P.O. 5438 Fresno, CA	Crocket Bros. Dodge Dealership, Tuolumne & Broadway Sts, Fresno, CA	Carpenter	Summer 1957
Hopkins & Son Construction P.O. 5438 Fresno, CA	Ann's Beer Mug, 3046 E. Belmont St., Fresno, CA	Carpenter	Summer 1958
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno Technical School, Tuolumne & Blackstone Sts., Fresno, CA	Carpenter	Summer 1959
Hopkins & Son Construction P.O. 5438 Fresno, CA	Ann's Beer Mug, 3046 E. Belmont St., Fresno, CA	Carpenter	1960
Hopkins & Son Construction P.O. 5438 Fresno, CA	Swift Poultry Plant East St. Fresno, CA	Carpenter (periodically)	1960-1968
Hopkins & Son Construction P.O. 5438 Fresno, CA	Central High School 3535 N. Cornelia St., Fresno, CA	Carpenter	1961
Hopkins & Son Construction P.O. 5438 Fresno, CA	Kirk Elementary, 2000 E. Belgravia St., Fresno, CA	Carpenter	1960

## EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	McKinley Avenue Medical Building, 610 McKinley Ave., Fresno, CA	Carpenter	1962
Hopkins & Son Construction P.O. 5438 Fresno, CA	7 Retail Stores, names presently unknown, downtown Fresno, between Fulton & Kern Sts., Fresno, CA	Carpenter	1962
Hopkins & Son Construction P.O. 5438 Fresno, CA	Scandinavian Middle School, 3232 N. Sierra St., Fresno, CA	Carpenter	1962; 1964
Hopkins & Son Construction P.O. 5438 Fresno, CA	Pacific Gas & Electric, Main Building, Corcoran, CA	Carpenter	1963
Hopkins & Son Construction P.O. 5438 Fresno, CA	Laton Elementary School, 6065 East Latonia St., Laton, CA	Carpenter	1963
Hopkins & Son Construction P.O. 5438 Fresno, CA	Travelers Body & Fender Works, 1861 N. Broadway St., Fresno, CA	Carpenter	1963
Hopkins & Son Construction P.O. 5438 Fresno, CA	Jane Adams Elementary School, 2117 W. McKinley Ave., Fresno, CA	Carpenter	1964
Hopkins & Son Construction P.O. 5438 Fresno, CA	Retail Store Building, Pine & Blackstone Sts., Fresno, CA	Carpenter	1965
Hopkins & Son Construction P.O. 5438 Fresno, CA	City of Fresno Waste Water Treatment Plant, 5607 W. Jensen St., Fresno, CA	Carpenter	1966
Hopkins & Son Construction P.O. 5438 Fresno, CA	Dairy Queen, Pinedale, CA	Carpenter	1966

EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Sequoia Middle School, 4050 E. Hamilton St., Fresno, CA	Carpenter	1966
Hopkins & Son Construction P.O. 5438 Fresno, CA	County of Fresno, Welfare Dept. Building, 4468 E. Kings Canyon, Fresno, CA	Carpenter	1967
Hopkins & Son Construction P.O. 5438 Fresno, CA	PG&E Building, Fulton and Tuolumne Sts., Fresno, CA	Carpenter	1968
Hopkins & Son Construction P.O. 5438 Fresno, CA	Clovis Fire Station, Administration Bldg. 633 Pollasky St., Clovis, CA	Carpenter	1968-1969
Hopkins & Son Construction P.O. 5438 Fresno, CA	Clovis Fire Station, Administration Bldg., Armstrong and Nees Ave., Clovis, CA	Carpenter	1968-1969
Hopkins & Son Construction P.O. 5438 Fresno, CA	T.G. Schmeiser Co. Building, 3160 E. California St., Fresno, CA	Carpenter	1968
Hopkins & Son Construction P.O. 5438 Fresno, CA	Sheriff's Dept. Building, Fresno & M Sts., Fresno, CA	Carpenter	1969
Larsen Ratto Construction Co 820 E. Gettysburg Fresno, CA	Larsen Ratto Construction Co. Various locations throughout Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	Pacific Bell, Main Building, Van Ness & Tuolumne Sts., Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	Calwa Elementary School, 4303 E. Jensen St., Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, C A	County of Fresno, Hall of Records Building, 2281 Tulare Street, Fresno, CA	Carpenter	1970

## EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Swift Poultry, Turkey Processing Plant, California St. Fresno, CA	Carpenter	1970
Hopkins & Son Construction P.O. 5438 Fresno, CA	County of Fresno Building, 2348 Mariposa Street, Fresno, CA	Carpenter	1971
Hopkins & Son Construction P.O. 5438 Fresno, CA	Romaine School Administration Building, 1 <sup>st</sup> & Belmont Sts., Fresno, CA	Carpenter	1971
Conklin Construction Co., Kingsburg, CA	Bear Club Bar & Restaurant, Manning and Lackjack Sts, Reedley, CA	Carpenter	1972
Conklin Construction Co., Kingsburg, CA	Reedley College, 995 N. Reedley Ave, Reedley, CA	Carpenter	1972
Conklin Construction Co. Kingsburg, CA	Madera Jr. High School, Yosemite Ave., Madera CA	Carpenter	1972
Conklin Construction Co., Kingsburg, CA	Easton Alcoa Elementary School, 29551 Avenue 12, Madera, CA	Carpenter	1973
Conklin Construction Co., Kingsburg, CA	Jackson Insurance Co. Building, Kingsburg, CA	Carpenter	1973
Hopkins & Son Construction P.O. 5438 Fresno, CA	Braun-Percilis-Wagner Surveyors Building, Blackstone & Princeton Ave., Fresno, CA	Carpenter	1973
Hopkins & Son Construction P.O. 5438 Fresno, CA	C.H. Baker Shoe Store, Manchester Shopping Center, Fresno, CA	Carpenter	1973-1991
Hopkins & Son Construction P.O. 5438 Fresno, CA	Riverdale High School, Riverdale, CA	Carpenter	1974

## EXHIBIT B (cont'd.)

	<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
1				
2				
3	Hopkins & Son Construction	Northside Professional Building,	Carpenter	1974-1977
4	P.O. 5438	1313 E. Herndon St.,	(periodically)	
5	Fresno, CA	Fresno, CA		
6	Hopkins & Son Construction	French's Mustard Plant,	Carpenter	1975
7	P.O. 5438	Muscat & Chestnut Ave.,		
8	Fresno, CA	Fresno, CA		
9	Hopkins & Son Construction	California State University, Fresno, 5241 N. Maple St.,	Carpenter	1975
10	P.O. 5438	Fresno, CA		
11	Fresno, CA	Fresno, CA		
12	Hopkins & Son Construction	Guarantee Savings & Loan Building,	Carpenter	1975
13	P.O. 5438	Shaw & Sixth Streets,		
14	Fresno, CA	Fresno, CA		
15	Hopkins & Son Construction	Eddie's Pastry Shop,	Carpenter	1976
16	P.O. 5438	Manchester Shopping Center, Fresno, CA		
17	Fresno, CA	Fresno, CA		
18	Hopkins & Son Construction	Perry Boys Smorgy,	Carpenter	1976
19	P.O. 5438	Manchester Shopping Center, Fresno, CA		
20	Fresno, CA	Fresno, CA		
21	Hopkins & Son Construction	Jiffy Mart,	Carpenter	1976
22	P.O. 5438	Elm Avenue between Lincoln & Hopkins Sts.,		
23	Fresno, CA	Fresno, CA		
24	Hopkins & Son Construction	Guarantee Savings & Loan Building, Fresno and Fulton Streets, Fresno, CA	Carpenter	1976
25	P.O. 5438	Fresno, CA		
26	Fresno, CA	Fresno, CA		
27	Hopkins & Son Construction	Fresno Equipment Co. Building,	Carpenter	1977
28	P.O. 5438	4288 S. Bagly Avenue,		
	Fresno, CA	Fresno, CA		
	Hopkins & Son Construction	Washington Elementary School,	Carpenter	1977
	P.O. 5438	1420 2 <sup>nd</sup> and Bauder Sts.,		
	Fresno, CA	Selma, CA		
	Hopkins & Son Construction	Fire Station No. 12,	Carpenter	1977
	P.O. 5438	Marks and Acacia Sts.,		
	Fresno, CA	Fresno, CA		

EXHIBIT B (cont'd)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	City of Fresno Waste Water Treatment Plant, 5607 W. Jensen St., Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Guarantee Savings & Loan Building, Miniwana and Shaw Sts., Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Bo Won Association Building, 9342 F Street, Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fresno Air Terminal, Lounge, Kitty Hawk Restaurant, Fresno, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Selma Police Station, Selma, CA	Carpenter	1978
Hopkins & Son Construction P.O. 5438 Fresno, CA	Selma City Hall Building, Selma, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Valley Pipe Supply Co. Building 801 Santa Clara St., Fresno, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Fire Station No. 7, Cherry Ave., Fresno, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Heartland Elementary (aka Jefferson Elementary) Silvia & Thompson Sts., Selma, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	Lloyd's Bank, Shaw Avenue, Fresno, CA	Carpenter	1979
Hopkins & Son Construction P.O. 5438 Fresno, CA	American Transfer Co. Bldg., 2810 E. Jensen St., Fresno, CA	Carpenter	1979

EXHIBIT B (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Hopkins & Son Construction P.O. 5438 Fresno, CA	Long's Drug Store, Manchester Shopping Center, Fresno, CA	Carpenter	1979-1980
Hopkins & Son Construction P.O. 5438 Fresno, CA	Container Corporation of America Building, 2525 S. Sunland St., Fresno, CA	Carpenter	1980
Hopkins & Son Construction P.O. 5438 Fresno, CA	Pacific Bell Building, 334 DeWitt Avenue, Clovis, CA	Carpenter	1980
Hopkins & Son Construction P.O. 5438 Fresno, CA	Hopkins & Son Construction, Fresno, CA, various locations in and throughout Fresno, CA and northern CA	Carpenter	1980- 2/2002

PARA OCCUPATIONAL EXPOSURE:

Decedent recalled working with his father, William Hopkins, deceased. Decedent worked on the new construction and demolition of various commercial buildings, including but not limited to: firehouses; shopping centers; schools; office buildings; bank buildings; restaurants; and public utility buildings. Decedent's exposure (and secondary exposure from his father's work clothes) to asbestos and asbestos-containing products occurred at various locations inside the State of California, including plaintiffs family residence located at 5774 S. Elm Street, Fresno, California.

Decedent's exposure to asbestos and asbestos-containing products caused severe and permanent injury to the decedent, including, but not limited to breathing difficulties, asbestosis, lung and/or other cancer, mesothelioma, and/or other lung damage. Decedent was diagnosed with mesothelioma on or about February 2002.

Decedent stopped working on February 19, 2002, due to his mesothelioma.



Hopkins v. Plant Insulation, et al.  
San Francisco Superior Court CGC06450944

**PROOF OF SERVICE**

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is One Market, Spear Street Tower, 32nd Floor, San Francisco, California. On the date stated below, at San Francisco, California, I served the attached document(s) on the parties in this action as follows:

**APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION**

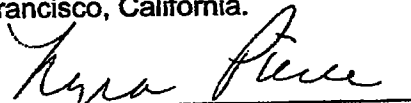
☒ By causing the document listed above to be personally delivered to each of the person(s) set forth below:

Robert A. Sacks  
Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, CA 90067

Imperial Tobacco Canada Limited  
3711 West St-Antoine  
City of Montreal  
Province of Quebec, Canada H4C 3P6

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 14<sup>th</sup> day of April, 2006, at San Francisco, California.

  
Nyra Pierce

MORGENSTEIN & JUBELIRER LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

02914.00001  
610747.1

PROOF OF SERVICE

**Exhibit B-5**

Case no.CGC-06-450944

**UNITED STATES OF AMERICA  
SUPERIOR COURT OF CALIFORNIA  
(Unlimited jurisdiction)  
COUNTY OF SAN FRANCISCO**

**BETWEEN:**

**MARLENE HOPKINS, Individually, as Wrongful Death Heir, and as Successor-in-Interest to  
NORMAN HOPKINS, JR., Deceased; and MICHELLE HOPKINS, and MICHAEL HOPKINS, as  
Legal Heirs of NORMAN HOPKINS, Deceased, and THE FLINTKOTE COMPANY**  
*Plaintiffs*



-and-

**PLANT INSULATION COMPANY; UNIROYAL HOLDING, INC.,; IMPERIAL TOBACCO  
CANADA LIMITED; SULLIVAN & CROMWELL LLP; and DOES 1 through 100,**  
*Defendants*

**AFFIDAVIT OF SERVICE**

1. I, the undersigned, **ERIC MARTIN**, bailiff of Justice of the Province of Quebec, Canada, being duly sworn, having an elected domicile at 407, Saint-Laurent Street, in the city of Montreal, Province of Quebec, Canada, solemnly affirm the following:
2. I did on Tuesday, the 18<sup>th</sup> day of April 2006 at 15:05 serve the defendant, **IMPERIAL TOBACCO CANADA LIMITED**, herein named with a true copy of the within ATTESTATION, APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION and EXHIBIT "A", by delivering true copy, speaking to and leaving the same with **ME TAMARA JITTO**, Legal Advisor for **IMPERIAL TOBACCO CANADA LIMITED**, at 3711 West St-Antoine, in the city of Montreal, province of Quebec, Canada.
3. At the time and place of such service, the said person acknowledged to me that she was **TAMARA JITTO**, and at my request she produced her driver's license permit bearing no. G-3008-130870-01.
4. I certify that I have noted under my signature the date and hour of service on the back of the copy so served.

**SWORN BEFORE ME in the City of  
Montreal, in the Province of Quebec, Canada on  
April, 18<sup>TH</sup>, 2006**

  
**COMMISSIONER OF OATHS**  


  
**ERIC MARTIN, Bailiff**

Case no.CGC-06-450944

**UNITED STATES OF AMERICA  
SUPERIOR COURT OF CALIFORNIA  
(Unlimited jurisdiction)  
COUNTY OF SAN FRANCISCO**

**BETWEEN:**

**MARLENE HOPKINS, Individually, as Wrongful Death Heir, and as Successor-in-Interest to  
NORMAN HOPKINS, JR., Deceased; and MICHELLE HOPKINS, and MICHAEL HOPKINS, as  
Legal Heirs of NORMAN HOPKINS, Deceased, and THE FLINTKOTE COMPANY**

*Plaintiffs*

**-and-**

**PLANT INSULATION COMPANY; UNIROYAL HOLDING, INC.,; IMPERIAL TOBACCO  
CANADA LIMITED; SULLIVAN & CROMWELL LLP; and DOES 1 through 100,**

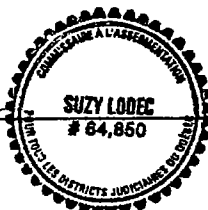
*Defendants*

**AFFIDAVIT OF SERVICE**

1. I, the undersigned, **ERIC MARTIN**, bailiff of Justice of the Province of Quebec, Canada, being duly sworn, having an elected domicile at 407, Saint-Laurent Street, in the city of Montreal, Province of Quebec, Canada, solemnly affirm the following:
2. I did on Tuesday, the 18<sup>th</sup> day of April 2006 at 15:05 serve the defendant, **IMPERIAL TOBACCO CANADA LIMITED**, herein named with a true copy of the within **ATTESTATION, APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION and EXHIBIT "A"**, by delivering true copy, speaking to and leaving the same with **ME TAMARA JITTO**, Legal Advisor for **IMPERIAL TOBACCO CANADA LIMITED**, at 3711 West St-Antoine, in the city of Montreal, province of Quebec, Canada.
3. At the time and place of such service, the said person acknowledged to me that she was **TAMARA JITTO**, and at my request she produced her driver's license permit bearing no. G-3008-130870-01.
4. I certify that I have noted under my signature the date and hour of service on the back of the copy so served.

**SWORN BEFORE ME in the City of  
Montreal, in the Province of Quebec, Canada on  
April, 18<sup>TH</sup>, 2006**

  
**COMMISSIONER OF OATHS**



  
**ERIC MARTIN, Bailiff**

POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jean L. Bertrand (CSB 083250) MORGENSTEIN & JUBELIRER LLP One Market, Spear Street Tower, 32nd Floor  San Francisco, CA 94105 TELEPHONE NO.: 415.901.8700 FAX NO. (Optional): 415.901.8701 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff THE FLINTKOTE COMPANY		FOR COURT USE ONLY  <b>FILED</b> San Francisco County Superior Court APR 20 2006 GORDON PARKER, Clerk By: <i>May Ann Miller</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
PETITIONER/PLAINTIFF: MARLENE HOPKINS, et al.		CASE NUMBER: CGC06450944
RESPONDENT/DEFENDANT: PLANT INSULATION COMPANY, et al.		
<b>PROOF OF SERVICE—CIVIL</b> Check method of service (only one): <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Facsimile <input type="checkbox"/> By E-Mail/Electronic Transmission		
JUDGE: DEPT.:		

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.

2. My address is (specify one):

a. ☒ Business:407 SAINT-LAURENT STREET,  
MONTREAL, QUEBEC, CANADAb. ☐ Residence:3. On (date): APRIL 18, 2006 I served the following documents (specify):  
APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

4. I served the documents on the persons below, as follows:

a. Name of person served: TAMARA JITTO, LEGAL ADVISER FOR IMPERIAL TOBACCO CANADA LIMITED

b. Address of person served: 3711 WEST ST-ANTOINE, MONTREAL, QUEBEC, CANADA

c. Fax number or e-mail address of person served, if service was by fax or e-mail:

d. Time of service, if personal service was used: 15:05 HOURS

☐ The names, addresses, and other applicable information about the persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

5. The documents were served by the following means (specify):

a. ☒ By personal service. I personally delivered the documents to the persons at the addresses listed in item 4.

(1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME HOPKINS, et al. v. PLANT INSULATION  
COMPANY, et al.

CASE NUMBER:  
CGC06450944

- 5 b. ☐ By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and (specify one):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state):
- c. ☐ By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 4 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ By fax transmission. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 4. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☐ By e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

4/19/06

ERIC MARTIN, BAILIFF OF JUSTICE OF QUEBEC  
(TYPE OR PRINT NAME OF DECLARANT)

  
(SIGNATURE OF DECLARANT)

(If item 5d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

#### DECLARATION OF MESSENGER

- ☐ By personal service. I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(NAME OF DECLARANT)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

**Exhibit B-6**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jean L. Bertrand (CSB 083250) MORGENSTEIN & JUBELIRER LLP One Market, Spear Street Tower, 32nd Floor San Francisco, CA 94105 TELEPHONE NO.: 415.901.8700 FAX NO. (Optional): 415.901.8701 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff THE FLINTKOTE COMPANY SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		POS-010 FOR COURT USE ONLY <b>FILED</b> San Francisco County Superior Court APR 20 2006 GORDON PARK-LI, Clerk BY: <i>S. J. Am. Mer...</i> Deputy Clerk
PLAINTIFF/PETITIONER: MARLENE HOPKINS, et al. DEFENDANT/RESPONDENT: PLANT INSULATION COMPANY, et al.	CASE NUMBER: CGC06450944 Ref. No. or File No.:	
<b>PROOF OF SERVICE OF SUMMONS</b>		

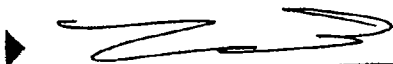
(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
  - ☒ summons
  - ☒ complaint
  - ☒ Alternative Dispute Resolution (ADR) package
  - ☒ Civil Case Cover Sheet (served in complex cases only)
  - ☐ cross-complaint
  - ☒ other (specify documents): NOTICE TO PLAINTIFF OF CASE MANAGEMENT CONFERENCE; MEDIATION SERVICES BROCHURE AND ATTESTATION
- Party served (specify name of party as shown on documents served): IMPERIAL TOBACCO CANADA LIMITED
  - Person served: ☐ party in item 3a ☒ other (specify name and relationship to the party named in item 3a):  
 JOHN KISER, LEGAL ADVISOR FOR IMPERIAL TOBACCO CANADA LIMITED
- Address where the party was served: 3711 WEST ST-ANTOINE, MONTREAL, QUEBEC, CANADA
- I served the party (check proper box)
  - ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): APRIL 7, 2006 (2) at (time): 14:10
  - ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):
    - ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2



PLAINTIFF/PETITIONER: MARLENE HOPKINS, et al.	CASE NUMBER: CGC06450944
DEFENDANT/RESPONDENT: PLANT INSULATION COMPANY, et al.	

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgment of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):
- ☐ Additional page describing service is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): IMPERIAL TOBACCO CANADA LIMITED  
under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |
7. Person who served papers
- a. Name: ETIENNE MORIN, BALIFF OF JUSTICE OF THE PROVINCE OF QUEBEC, CANADA
- b. Address: 407 SAINT-LAURENT STREET, MONTREAL, QUEBEC, CANADA
- c. Telephone number:
- d. The fee for service was: \$ 119.58 (CANADIAN)
- e. I am:
- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:
8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.
- Date: 4/19/06
- ETIENNE MORIN  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)
-   
(SIGNATURE)

**Exhibit B-7**

Attorney or Party without Attorney: JEAN L. BERTRAND, Bar #83250 MORGANSTEIN & JUBELIRER LLP ONE MARKET, SPEAR STREET TOWER 32ND FLOOR SAN FRANCISCO, CA 94105 Telephone No: 415-901-8700		For Court Use Only <b>FILED</b> San Francisco County Superior Court APR 20 2006 GORDON PAHK-LI, Clerk BY: <i>Steph Groth</i> Deputy Clerk	
Attorney for: Plaintiff, The Flintkote Company		Ref. No. or File No.: 2914.1	
Insert name of Court, and Judicial District and Branch Court: San Francisco County Superior Court, Civic Center Courthouse			
Plaintiff: MARLENE HOPKINS, et al. Defendant: Plant Insulation Company; Uniroyal Holding, Inc.; Imperial Tobacco Canada Limited; E			
<b>PROOF OF SERVICE HAND DELIVERY</b>		Hearing Date:	Time:
		Dept/Div:	Case Number: CGC06450944

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of the APPLICATION FOR DESIGNATION OF COMPLEX LITIGATION

3. a. Party served:

ROBERT E. SACKS @ SULLIVAN & CROMWELL LLP

b. Person served:

DARLENE BISSADA, PERSON IN CHARGE OF OFFICE AT THE TIME OF SERVICE

4. Address where the party was served:

1888 CENTURY PARK EAST  
LOS ANGELES, CA 90067

5. I served the party:

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party on: Mon., Apr. 17, 2006 at: 11:30AM, to the person(s) indicated below in the manner as provided in 1011 CC  
DARLENE BISSADA, PERSON IN CHARGE OF OFFICE AT THE TIME OF SERVICE

(1) (Business) I informed him or her of the general nature of the papers.

7. Person Who Served Papers:

a. STEPHEN GROTH

Recoverable Cost Per CCP 1033.5(a)(4)(B)

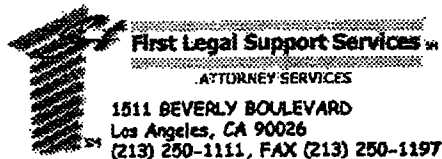
d. The Fee for Service was:

e. I am: (3) registered California process server

(i) Independent Contractor

(ii) Registration No.: 5270

(iii) County: Los Angeles



8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Tue, Apr. 18, 2006

Judicial Council Form  
Rule 982.9.(a)&(b) Rev July 1, 2004

PROOF OF SERVICE  
HAND DELIVERY

*Stephen Groth*  
(STEPHEN GROTH)

6282122 jeabe-mj.9435

**Exhibit B-8**

**ATTESTATION**

I, the undersigned, **Peter P. Meringolo**, Attorney, practicing law with the firm Snyder, Miller & Orton, LLP, residing and domiciled for the purposes hereof at 111 Sutter Street, Suite 1950, San Francisco, California, USA, 94104, am the attorney for The Flintkote Company and solemnly affirm that:

1. I am a member of the California State Bar (CSB 197136).
2. This copy is a certified true copy of :
  - the FIRST AMENDED COMPLAINT FOR DAMAGES AND RELIEF AGAINST ALTER EGO, FOR RECOVERY OF DIVIDENDS, FOR RECOVERY OF FRAUDULENT TRANSFERS, FOR DAMAGES BY REASON OF BREACH OF FIDUCIARY DUTY, FOR DAMAGES FOR BREACH OF DUTY AND NEGLIGENCE, TO ENFORCE CONSTRUCTIVE TRUST, FOR RESTITUTION, AND FOR DECLARATORY RELIEF

**SWORN TO BEFORE ME**, in the City of \_\_\_\_\_

in the State of California, this \_\_\_\_\_  
day of April, 2006.

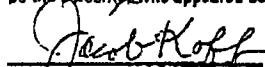
\_\_\_\_\_  
**NOTARY PUBLIC**



**PETER P. MERINGOLO**  
**SNYDER, MILLER & ORTON, LLP**

State of California, County of San Francisco

Subscribed and sworn to (or affirmed) before me this 28<sup>th</sup> day of April, 2006, by Peter P. MERINGOLO personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
Jacob Koff, Notary Public



Apr. 27. 2006 2:58PM

No. 2023 P. 2

1 ALAN R. BRAYTON (State Bar No. 073685)  
2 GILBERT L. PURCELL (State Bar No. 113603)  
3 DAVID R. DONADIO (State Bar No. 154436)  
4 BRAYTON PURCELL, LLP  
5 222 Rush Landing Road  
6 P.O. Box 6169  
7 Novato, CA 94948-6169  
8 Telephone (415) 898-1555

9 Attorneys for Plaintiffs Hopkins

10 STEPHEN M. SNYDER (State Bar No. 054598)  
11 JAMES L. MILLER (State Bar No. 071958)  
12 SNYDER MILLER & ORTON LLP  
13 111 Sutter Street, Suite 1950  
14 San Francisco, CA 94104  
15 Telephone: (415) 962-4400  
16 Facsimile: (415) 962-4401

17 Attorneys for The Flintkote Plaintiffs  
18 (Additional Counsel Listed On Signature Page)

19 SUPERIOR COURT OF CALIFORNIA (UNLIMITED JURISDICTION)

20 COUNTY OF SAN FRANCISCO

21 MARLENE HOPKINS, Individually, as  
22 Wrongful Death Heir, and as Successor-in-  
23 Interest to NORMAN HOPKINS, JR.,  
24 Deceased; and MICHELLE HOPKINS, and  
25 MICHAEL HOPKINS, as Legal Heirs of  
26 NORMAN HOPKINS, Deceased, THE  
27 FLINTKOTE COMPANY, THE OFFICIAL  
28 COMMITTEE OF THE ASBESTOS  
PERSONAL INJURY CLAIMANTS, and  
JAMES J. MCMONAGLE as the LEGAL  
REPRESENTATIVE FOR FUTURE  
ASBESTOS PERSONAL INJURY  
CLAIMANTS,

Plaintiffs,

vs.

PLANT INSULATION COMPANY;  
UNIROYAL HOLDING, INC.; IMPERIAL  
TOBACCO CANADA LIMITED;  
SULLIVAN & CROMWELL LLP; and  
DOES 1 through 100,

Defendants.

ENDORSED  
FILED  
San Francisco County Superior Court

APR 27 2006

GORDON PARKLI, Clerk

BY: MARIA SANCHEZ  
Deputy Clerk

Case No. CGC06450944

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND RELIEF AGAINST ALTER  
EGO, FOR RECOVERY OF DIVIDENDS,  
FOR RECOVERY OF FRAUDULENT  
TRANSFERS, FOR DAMAGES BY REASON  
OF BREACH OF FIDUCIARY DUTY, FOR  
DAMAGES FOR BREACH OF DUTY AND  
NEGLIGENCE, TO ENFORCE  
CONSTRUCTIVE TRUST, FOR  
RESTITUTION, AND FOR DECLARATORY  
RELIEF.

Snyder  
Miller  
& Orton  
LLP

{00007643.DOC; 2}

1

FIRST AMENDED COMPLAINT

FILED BY FAX

1 Plaintiffs MARLENE HOPKINS, MICHELLE HOPKINS, MICHAEL HOPKINS, THE  
2 FLINTKOTE COMPANY, THE OFFICIAL COMMITTEE OF THE ASBESTOS PERSONAL  
3 INJURY CLAIMANTS, and JAMES J. MCMONAGLE as the LEGAL REPRESENTATIVE FOR  
4 FUTURE ASBESTOS PERSONAL INJURY CLAIMANTS allege:

5 **PARTIES, JURISDICTION AND VENUE**

6 1. Plaintiffs Marlene Hopkins, Michelle Hopkins, and Michael Hopkins (collectively,  
7 "Hopkins") bring this action as the result of the wrongful death of Norman Hopkins ("Decedent"),  
8 who was the husband of Marlene Hopkins and father of Michelle and Michael Hopkins. Marlene  
9 Hopkins is successor in interest to Decedent under California Code of Civil Procedure section  
10 377.11. Plaintiffs Hopkins are entitled to bring this action pursuant to California Code of Civil  
11 Procedure sections 377.30 and 377.60. Plaintiffs Hopkins are the legal heirs of Decedent. Decedent  
12 contracted mesothelioma and died on September 27, 2005, as the result of exposure to asbestos  
13 containing products manufactured and/or distributed by defendant Imperial Tobacco, an alter ego of  
14 The Flintkote Company, and by defendants Plant Insulation Company and Uniroyal Holding, Inc.

15 2. Plaintiff The Flintkote Company ("Flintkote") is, and at all relevant times, has been a  
16 corporation organized and existing under the laws of the State of Delaware, with a principal place of  
17 business in San Francisco, California, qualified to do and doing business in California. For many  
18 years, Flintkote manufactured and sold asbestos-containing products. Because of the number of  
19 asbestos personal injury and death claims against it, numbering over 157,000, Flintkote filed a case  
20 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States  
21 Bankruptcy Court for the District of Delaware on May 1, 2004, Case No. 04-11300 (JKF) (the  
22 "Bankruptcy Case"), as a result of its asbestos-related personal injury liabilities. Flintkote is and  
23 remains the debtor and debtor-in-possession in that case. Subsequently, the Office of the United  
24 States Trustee appointed Plaintiff The Official Committee of Asbestos Personal Injury Claimants  
25 ("ACC") and the Bankruptcy Court appointed Plaintiff James J. McMonagle as the Legal  
26 Representative for Future Asbestos Personal Injury Claimants ("FCR"). The ACC and FCR are the  
27 only two official creditor constituencies in the Bankruptcy Case. On April 27, 2006, the Bankruptcy  
28 Court approved an agreement that authorized Flintkote, the ACC, and the FCR to collectively

1 represent the interests of Flintkote's estate in this matter and, subject to any procedural limitations  
2 applicable to party capacity in the above-entitled action, to be named and act as co-plaintiffs in this  
3 action (the "April 27 Order"). Plaintiffs Flintkote, ACC, and FCR shall collectively be referred to  
4 herein as "The Flintkote Plaintiffs."

5 3. Defendant Plant Insulation Company ("Plant") is a California corporation, with its  
6 principal place of business situated in the city and county of San Francisco.

7 4. Defendant Uniroyal Holding, Inc. ("Uniroyal") is a corporation, and is successor in  
8 interest to Uniroyal, Inc.

9 5. Defendant Imperial Tobacco Canada Limited ("Imperial Tobacco") is the major  
10 Canadian tobacco company. It is a Canadian corporation formerly known as Imasco Limited and will  
11 be referred to herein as "Imperial Tobacco" or "Imasco." Imperial Tobacco has manufactured  
12 cigarettes and other tobacco products in Canada for many years. Its brands include "Players" and "du  
13 Maurier" cigarettes. Imperial Tobacco has sold and distributed its products in the United States,  
14 including California, for many years.

15 6. Defendant Sullivan & Cromwell LLP ("S&C") is a partnership and a law firm. S&C  
16 maintains offices in California, among other places. S&C is a citizen of California, in that there are  
17 S&C partners who reside in and are citizens of California.

18 7. Plaintiffs are ignorant of the true names and capacities of defendants sued under the  
19 fictitious names Doe 1 through Doe 100, inclusive, and pray that when they are discovered the  
20 complaint may be amended to allege such names and capacities. Each of the fictitiously named  
21 defendants is responsible in some manner for the occurrences alleged hereafter.

22 8. Jurisdiction in the Superior Court as a case of unlimited jurisdiction is proper because  
23 the monetary causes of action all arise under state law, the demand exceeds \$25,000, and the action  
24 seeks in part declaratory relief under California Code of Civil Procedure section 1060. The Flintkote  
25 Plaintiffs are authorized by virtue of the Bankruptcy Code and the April 27 Order to bring certain of  
26 the causes of action, all of which arise under state law.

27 9. Venue in the County of San Francisco is proper because defendants Imperial Tobacco  
28 and S&C have no residence in California and can be sued in any county in California, and their



liability arises from conduct that occurred in San Francisco, and because defendant Plant has its principal place of business situated in San Francisco.

10. Plaintiffs Hopkins have the right to assert an alter ego claim against Imperial Tobacco directly, and/or by reason of the abandonment and/or transfer by Flintkote to Hopkins of the right, to the extent of losses held by them. The alter ego claims by Hopkins and The Flintkote Plaintiffs depend upon the same set of facts. Pursuing such claims against a substantial well-financed defendant is difficult and expensive, so that it is economically not practical for a single individual to pursue them alone. Accordingly, The Flintkote Plaintiffs and plaintiffs Hopkins have agreed to bring the alter ego claims together as plaintiffs and to cooperate in prosecuting them. Plaintiffs Hopkins make no claim against S&C.

### FACTS

11. Flintkote manufactured and sold asbestos containing products for many years, including vinyl asbestos floor tile, asbestos cement pipe and many other products. Flintkote, through its wholly owned subsidiary Flintkote Mines, Inc. mined asbestos in Quebec, Canada from 1946 through approximately 1970. Beginning in or about 1972, Flintkote, along with many other companies began to be named as a defendant in numerous lawsuits brought by persons exposed to asbestos contained in its products who suffered from a variety of asbestos induced diseases. The number of asbestos cases filed against Flintkote and the other companies increased over time.

12. In August 1982 Johns Manville Corporation and twenty of its subsidiaries and affiliates filed for bankruptcy and claimed they were forced into bankruptcy by the asbestos claims filed against it. The bankruptcy filing was major news as Johns Manville was, absent the asbestos litigation, a large and profitable American company. Other companies named as defendants in the asbestos litigation were also forced into bankruptcy as a result of the litigation, including:

<u>Company</u>	<u>Date of Filing Bankruptcy</u>
UNR Industries	July 19, 1982
Amatex Corporation	November 1, 1982
Forty-Eight Insulations, Inc.	April 19, 1985
Standard Insulation	August 4, 1986
Nicolet	July 17, 1987

13. A number of defendants regularly sued in the asbestos litigation banded together in the

1 early 1980's and sought to settle disputes with their insurers where possible and establish a facility  
2 that would provide an efficient joint defense to members of the group. The discussions were  
3 mediated by Dean Harry Wellington of the Yale Law School. The participants became known as the  
4 "Wellington Group." By June 1985 they had signed an agreement and had begun to operate as the  
5 Asbestos Claims Facility ("ACF").

6 14. Flintkote was a member of the ACF and, for a while, asbestos cases against it were  
7 defended and settled or tried by lawyers selected by the Asbestos Claims Facility. The ACF defense  
8 arrangements were initially advantageous to Flintkote as they allowed the company to defend  
9 asbestos personal injury cases at shared cost and thus allowed it to conserve insurance resources that  
10 would be more quickly consumed if it was required to defend cases on its own. The ACF operated  
11 through late 1988, at which point it dissolved as a result of disagreements among its members, e.g., as  
12 to appropriate defense strategies and as to how costs should be allocated among participants.

13 15. Tobacco companies whose cigarettes were implicated in the rising tide of asbestos-  
14 related disease, such as Imasco and its counsel S&C, by 1986 knew or had ready access to  
15 information which pointed to the threatening scope of the asbestos litigation to follow. That  
16 information included:

- 17 • The aforementioned bankruptcies of Johns-Manville Corporation and other asbestos  
18 defendants, which increased the payment shares in the tort system of the surviving  
19 companies;
- 20 • Numbers of claims filings were increasing and claims values were increasing;
- 21 • Diseases caused by asbestos exposure could have a latency period of decades, which  
22 meant liabilities would extend far into the future;
- 23 • Commercial usage of asbestos in the United States continued to increase through the  
24 1970's, with significant implications for future morbidity;
- 25 • Inability to extend the asbestos litigation to include significant responsible parties,  
26 such as the United States Government and the tobacco companies, all of whom had  
27 contributed to the diseases and injuries of asbestos victims;
- 28 • Unmistakable signals from casualty insurers that they could not be counted on by

1 defendant companies in the face of ever-increasing demands, with signs from some  
2 that they would not survive. By mid-1987, two of Flintkote's insurers had become  
3 insolvent, and not until the late 1980's and into the early 1990's did Flintkote reach  
4 agreements as to coverage with only 60% of its insurers;

- 5 • Substantial disagreements among ACF members that weakened the effectiveness of  
6 the ACF and hastened its demise. These disagreements were apparent as early as  
7 1986. There were clear indicators that members were going to leave the ACF, and  
8 seven did so in 1987. Persons knowledgeable about the operations and functioning of  
9 the ACF, such as Imasco and S&C, knew or should have known in 1986 that the ACF  
10 would not continue to operate indefinitely as originally agreed upon and also knew or  
11 should have known that disintegration of the ACF was likely in the foreseeable future.

12 16. Imasco was quite familiar with the American asbestos litigation. It followed and  
13 monitored that litigation for a variety of reasons, including that it knew there was a synergistic or  
14 combinative effect which produced increased disease rates in persons who smoked its tobacco  
15 products and who were also exposed to asbestos. Consequently Imasco understood that the litigation  
16 posed risks to corporate and insurer solvency.

17 17. In the 1980s, Imasco was engaged in a program of corporate diversification.  
18 Specifically, it was seeking to acquire non-tobacco businesses. One target of Imasco's diversification  
19 program in 1986 was a Canadian financial business Canada Trustco Mortgage Company ("Canada  
20 Trustco"). But, Canada Trustco had been acquired by another Canadian company, Genstar  
21 Corporation. So, in order to get control of Canada Trustco, Imasco, operating through a corporate  
22 subsidiary, Imasco Enterprises, Inc. ("IEI"), commenced a hostile purchase of all shares of Genstar  
23 Corporation ("Genstar"). At the time Genstar had a number of businesses and subsidiary  
24 corporations, including several in the United States. Genstar was Flintkote's ultimate parent  
25 company, with a number of wholly owned subsidiary companies between Genstar and Flintkote.  
26 Imasco's stated objective in the purchase was to acquire Genstar's 98.9% holding of Canada Trustco  
27 common shares.

28 18. From the outset, Imasco's strategy was to use the value of Genstar's assets, other than

1 Canada Trustco, to finance the purchase of Canada Trustco. The strategy therefore involved  
2 restructuring and selling off most of Genstar's assets except Canada Trustco, so as to acquire Canada  
3 Trustco at an attractive price, using the liquidation of Genstar's assets, including Flintkote, to pay for  
4 the hostile takeover.

5 19. Imasco acquired Genstar in August 1986. Then, as it had planned to do, it set about  
6 selling most of Genstar's assets and businesses (other than Canada Trustco). To implement this  
7 scheme, Imasco dominated and controlled Flintkote and caused it to do its bidding. First it required  
8 Flintkote to isolate its asbestos liabilities from its major assets by creating four subsidiaries and then  
9 transferring Flintkote's valuable operating assets to them. Then, Imasco caused Flintkote to sell each  
10 of the subsidiaries to which Flintkote assets had been transferred, as well as two subsidiaries that had  
11 been created previously. Those sales were made to third parties for cash.

12 20. Gross proceeds from the sales of the Flintkote assets were approximately  
13 \$663,500,000 U.S., plus \$100,000,000 Canadian. The sales were completed by February 27, 1987.  
14 These asset transfers and sales were overseen by Imasco personnel working in San Francisco,  
15 California. Imasco assigned S&C to provide legal advice to Flintkote in order to implement the  
16 planned liquidation and sale of the Flintkote assets. At Imasco's direction, S&C began representing  
17 Flintkote and gave it legal advice in connection with the asset liquidation. S&C continued to  
18 represent its original client Imasco in connection with the liquidation throughout the process and  
19 thereafter. Flintkote did not give informed written consent to S&C representing both Flintkote and  
20 Imasco.

21 21. After these transactions, Flintkote's valuable operating businesses were gone. Their  
22 profits, cash flow, and credit were no longer available to pay the asbestos claims against Flintkote.  
23 Instead, Flintkote was left with only cash from the forced sales of its assets, together with insurance,  
24 much of which was contested by the insurers who had written the policies. The cash and insurance  
25 were all that Flintkote had with which to pay settlements and judgments in the asbestos litigation.  
26 However, the final step in Imasco's scheme to use Genstar's assets to pay for its acquisition of  
27 Canada Trustco was to transfer most of Flintkote's cash to Imasco, thereby reimbursing it for monies  
28 it expended in the hostile takeover of Genstar. Imasco decided to transfer the cash out of Flintkote

1 and to itself (through subsidiary corporations which it owned, controlled, and dominated) by cash  
2 dividends to be paid out by Flintkote.

3 22. The first transfer was accomplished through a dividend of \$170,200,000 declared in  
4 San Francisco, California, by Flintkote's board of directors on December 19, 1986. The dividend  
5 was to be paid on December 30, 1986. The money went to Imasco, the sole ultimate parent  
6 corporation of Flintkote.

7 23. At the time of the December 1986 dividend, S&C were and had been outside counsel  
8 to Imasco, which ultimately would receive the dividend, and represented Imasco in connection with  
9 the acquisition of Genstar and the liquidation of Flintkote. At the same time, S&C represented  
10 Flintkote in connection with the liquidation of its assets and in connection with the cash dividends  
11 that Imasco desired to receive from Flintkote. In connection with the 1986 dividend, S&C advised  
12 Flintkote that S&C had retained consultants to report on Flintkote's potential asbestos liabilities. It  
13 advised the Flintkote board that it had received preliminary advice from the consultant, and that there  
14 was a draft of the consultant's report. S&C advised the board that it could reasonably go forward and  
15 declare the dividend. S&C told the board that it did not believe the consultant's final report would  
16 alter its conclusions. S&C concurred in a presentation by Flintkote's general counsel regarding  
17 Flintkote's current and potential liabilities. The Flintkote directors in 1986 and 1987 were not  
18 knowledgeable about the asbestos litigation and relied upon S&C and its consultants for advice about  
19 it. The board minutes do not reflect any benefit to Flintkote or its creditors as a result of the proposed  
20 dividend transaction. Imasco paid the consultants for their services, but the board minutes do not  
21 show that the board was informed of that fact.

22 24. Stating that it was doing so in accordance with previous undertakings and "as an  
23 inducement" to each of Flintkote's officers and directors "to continue to fulfill his responsibilities" as  
24 such, Imasco had issued a letter on December 18, 1986, undertaking to indemnify and hold each of  
25 them harmless against any and all actions, suits or claims arising out of their actions, omissions or  
26 conduct as officers or directors of Flintkote at any time since Imasco acquired control of Genstar.

27 25. Imasco and S&C participated by telephone at the December 19, 1986, Flintkote board  
28 meeting and said to Flintkote that it would undertake to restore any dividends to Flintkote if a court

1 determined them to be improperly declared. On December 18, 1986, Imasco sent a letter confirming  
2 that in addition to the December 18, 1986, indemnity letter, Imasco would enter into an undertaking  
3 to replace funds to Flintkote to the extent required by an appropriate judicial body.

4 26. S&C's legal advice and Imasco's domination and control over Flintkote caused the  
5 dividend to be paid.

6 27. The second transfer of money from Flintkote, ultimately to Imasco, was by dividend  
7 of \$355,000,000 declared by Flintkote at a board meeting at San Francisco, California, on July 22,  
8 1987. It was to be paid on August 31, 1987 or before. The money went to Imasco through subsidiary  
9 corporations and entities that it controlled and dominated.

10 28. At the time of the July 1987 dividend, S&C were still outside legal counsel to Imasco  
11 and were representing Imasco, including with respect to Flintkote-related issues, such as the  
12 consequences and potential liabilities attached to receipt of cash via dividend from Flintkote in the  
13 face of Flintkote's asbestos liabilities. At the same time, S&C was representing Flintkote on those  
14 same issues, and on the issue of the director's liability in connection with declaring dividends to  
15 Imasco in the face of Flintkote's asbestos liabilities. On July 22, 1987, S&C as well as Imasco were  
16 present by telephone at the Flintkote board meeting in San Francisco. S&C had prepared a legal  
17 memorandum addressed to Flintkote. During the meeting, the memorandum was presented to the  
18 board, as was an overview of a study by Resource Planning Corporation ("RPC"), the consultant  
19 S&C had retained and whose preliminary report was used by S&C in connection with the December  
20 1986 board meeting.

21 29. The board minutes of the July 1987 meeting reflect that after payment of the  
22 dividends, Flintkote would have left retained earnings and paid-in capital of approximately  
23 \$80,000,000, but the estimated potential exposure from environmental cleanup was not to exceed  
24 \$20,000,000, and the estimated potential asbestos property damage (not personal injury) exposure  
25 taken from the RPC study was \$42,000,000.

26 30. In the July 22, 1987 board meeting, the board members were told that Imasco would  
27 undertake to restore dividend monies to the extent the declared dividends were deemed legally  
28 improper and necessary to satisfy unpaid judgment creditors of Flintkote. Imasco promised to supply



1 a writing memorializing the understanding. After the meeting, Imasco issued a letter dated July 27,  
2 1987 to Flintkote undertaking to repay to Flintkote any amounts (up to the full amount of dividends  
3 declared while Imasco was an indirect owner of Flintkote) finally determined by a court of competent  
4 jurisdiction to be due to Flintkote creditors but that cannot be satisfied out of Flintkote's assets  
5 because of dividends finally determined to have been improperly paid during Imasco's indirect  
6 ownership of Flintkote. A copy of the July 27, 1987 letter ("Dividend Repayment Contract") is  
7 attached as Exhibit A and incorporated by reference.

8 31. The S&C legal memorandum and the RPC study, both supplied by Imasco's and  
9 Flintkote's lawyers S&C, and Imasco's domination and control over Flintkote, caused the dividend to  
10 be paid, as was Imasco's plan from the time it took over Genstar.

11 32. S&C's relationship with Imasco supplied reason to structure S&C's advice so as to  
12 ensure that Flintkote would pay the dividends. The S&C memorandum contained substantial errors,  
13 omissions, and misleading statements, all of which tilted the conclusions in the memorandum in favor  
14 of Flintkote's payment of these dividends, including the following.

15 33. The S&C memorandum is dated June 25, 1987, and addressed to Flintkote. However,  
16 it actually spoke to Flintkote's directors as it is focused on whether the directors of Flintkote could  
17 declare the dividend yet escape personal liability for doing so. The memorandum is vague and  
18 indefinite as to Flintkote's obligations as a corporation.

19 34. The S&C memorandum contains legal analysis, including discussion of California  
20 law. In that connection, S&C advised Flintkote that California had adopted the Uniform Fraudulent  
21 Conveyance Act. S&C wrote that a conveyance could be set aside if the debtor would be rendered  
22 insolvent by the transfer, and that insolvency is defined in terms of a person's probable liability on  
23 existing debts as they became absolute and matured. S&C advised Flintkote that it was unclear  
24 whether tort claims that had not yet matured – because, for example, an asbestos-related disease had,  
25 not yet manifested itself – were considered existing debts. That advice misapprehended the  
26 controlling definitions, which included as a "debt" any legal liability, whether matured or unmatured,  
27 fixed or contingent. S&C also did not alert Flintkote that under California law, as well as in other  
28 jurisdictions that adopted the Uniform Fraudulent Conveyance Act, a voluntary conveyance made

1 without fair consideration, where there is existing indebtedness, is presumptively fraudulent, and it  
2 would then be incumbent upon the grantee (here, Imasco) to prove the conveyor (here, Flintkote) was  
3 solvent. *See Neumeyer v. Crown Funding Corp.*, 56 Cal.App.3d 178, 128 Cal.Rptr. 366 (1976).

4 35. S&C failed to advise Flintkote that California in 1986, effective January 1, 1987,  
5 changed the law and adopted a version of the Uniform Fraudulent Transfer Act. The new law made a  
6 transfer fraudulent as to present or future claims if the debtor reasonably should have believed he  
7 would incur debts beyond his ability to pay as they became due. The new statute therefore  
8 incorporated an objective test specifically looking to the incurring of future debts. This test was in  
9 addition to rules making fraudulent those transfers without fair consideration where the debtor was  
10 insolvent or became insolvent as a result of the transfer, or was about to engage in a business for  
11 which its remaining assets were unreasonably small in relation to the business.

12 36. The RPC report is dated June 23, 1987, and reflects that it was prepared for S&C. The  
13 RPC report stated that RPC had been retained by S&C to "estimate" the potential costs of pending  
14 and possible future asbestos-related property damage claims against Flintkote, but only "to consider"  
15 asbestos personal injury claims. RPC devoted cursory treatment to Flintkote's asbestos-related  
16 personal injury claims. RPC used a figure of \$9.2 million per year, and to 2001 only, for asbestos  
17 personal injury claims. The RPC report thus was based on an assumption, known to be questionable  
18 by Imasco and S&C, that the ACF would continue to operate with no significant changes in cost to  
19 Flintkote for 14 years. S&C assured Flintkote that directors were entitled to rely upon statements in  
20 an appraisal by an appraiser selected by the board. Although it was not an appraisal under Delaware  
21 law, although it had serious shortcomings in it with respect to Flintkote's asbestos personal injury  
22 liabilities, and although the Flintkote board did not select RPC, S&C advised the board that the RPC  
23 report ought to be considered an "appraisal" of asbestos-related liabilities upon which the directors  
24 could rely. Imasco and S&C did not advise the directors to seek an independent expert analysis  
25 regarding Flintkote's asbestos-related personal injury liabilities from a consultant or to retain  
26 independent counsel without a conflict of interest.

27 37. None of Imasco, S&C, or the RPC report advised Flintkote's board of the facts and  
28 developments described in paragraph 15, above, relevant to considering Flintkote's future asbestos-



1 related personal injury liabilities.

2 38. S&C labored under a conflict of interest when it undertook to represent and advise  
3 Flintkote while still representing Imasco. Flintkote, a company facing substantial and increasing  
4 asbestos-related claims, was obliged to consider and evaluate the interests of existing and future  
5 creditors before paying out \$525,200,000 in dividends. In contrast, Imasco had every interest in  
6 obtaining the \$525,200,000 to pay for its Canada Trustco acquisition, as had been Imasco's plan all  
7 along. S&C represented both Imasco and Flintkote, with plainly conflicting interests. The  
8 declaration of the dividends was tainted by this conflict of interest, by the inadequate and misleading  
9 legal advice provided by S&C and by the incomplete analysis in the RPC report and advice, which  
10 was procured by S&C for the specific purpose of attempting to justify the legal propriety of the  
11 dividends.

12 39. Imasco improperly caused the dividends to be paid by telling the Flintkote board:

- 13 • our lawyers, acting as your lawyers, together with their consultants, say you can do it;
- 14 • to induce you to pay us we agree to protect you if someone sues you; and
- 15 • if we are wrong about this and creditors are left unsatisfied and a court finally decides  
16 the dividends were improper, we will pay them back.

17 40. From the time Imasco acquired Genstar in August 1986, through September 29, 2003,  
18 Imasco held and maintained complete control over and dominated Flintkote through Imasco's  
19 indirect 100% ownership of Flintkote. Flintkote was in no position to assert claims against Imasco or  
20 to sue Imasco. S&C continued to act as an instrument of Imasco, guiding and giving legal advice to  
21 Flintkote, including with respect to the matters alleged herein, until September of 2003. Imasco's  
22 plan, which became Flintkote's plan by reason of Imasco's domination and control over Flintkote,  
23 and the continuing advice provided by S&C, was to use Flintkote to pay asbestos liabilities for as  
24 long as possible, and to attempt to keep Imasco and Flintkote separate for appearances sake, with the  
25 goal that when Flintkote ran out of money, no one would be able to recover the dividends or to fasten  
26 alter ego liability upon Imasco for Flintkote's asbestos-related claims. That Flintkote had been  
27 injured by wrongful acts leading to the dividends was inherently unknowable, depending upon  
28 expertise available only to sophisticated professionals such as S&C and RPC. S&C did not disclose

1 to Flintkote that it had rights with respect to the dividends.

2 41. From and after the divestiture of its subsidiaries and payment of the dividends,  
3 Flintkote operated as an asbestos claims resolution facility. Imasco exercised its domination and  
4 control over Flintkote in part through its wholly-owned subsidiaries, Imasco Holdings, Inc. and  
5 Imasco Holdings Group, Inc. (collectively, "IHI"). IHI took its orders from Imasco. IHI attorneys  
6 were involved in the claim resolution process. Flintkote consistently obtained releases for its parent  
7 companies, including Imasco, in settlements with asbestos claimants. Flintkote and IHI shared  
8 common officers and directors. Employees of Imasco or IHI were involved in management of  
9 Flintkote. S&C continued to advise Imasco or IHI and Flintkote on what should be done with  
10 Flintkote, with particular attention to how to avoid alter ego liability for Flintkote's asbestos-related  
11 liabilities. Flintkote handled its own asbestos liabilities, rather than join the Center for Claims  
12 Resolution as many asbestos defendants had done after the Asbestos Claims Facility disbanded, and  
13 Imasco therefore maintained control over the handling of the claims. Following the dividends, as a  
14 claim-paying and insurance-pursuing business, Flintkote's reliance on counsel was critical. Flintkote  
15 continued to consult S&C, Imasco's outside counsel, on asbestos issues, and IHI legal personnel were  
16 involved in overseeing Flintkote's legal strategies because of the importance of monitoring the  
17 critical issue of asbestos liability. The goals of Imasco throughout were to forestall any liability to  
18 repay the dividend and to confine the asbestos-related liabilities to Flintkote.

19 42. Imasco not only had dismantled all Flintkote's profitable businesses and sold them off,  
20 it had taken and used the money to reimburse itself for funds it had expended for buying the one  
21 business it did want, Genstar's Canada Trustco, a financial services company in Canada. After  
22 Imasco took the \$525,200,000 in dividends, Flintkote's remaining assets were woefully insufficient  
23 to satisfy its asbestos-related personal injury liabilities.

24 43. From and after the time of the Imasco hostile takeover, Flintkote did not file public  
25 financial statements. It did not publicly disclose its true financial condition and the nature and extent  
26 of its asbestos liabilities. Instead, Imasco, as Flintkote's ultimate parent corporation filed public  
27 financial statements in Canada that purported to represent Flintkote's financial condition. Imasco  
28 represented continuously that Flintkote's asbestos liabilities were insignificant and unimportant.

1 Following the dividend paid in 1986, in its March 31, 1987, public financial statements, Imasco  
2 represented, with respect to Flintkote's financial condition, that

3 [C]ertain of the unconsolidated subsidiaries acquired as part of the Genstar transaction are  
4 subject to numerous claims and suits, some of which allege significant damage. In the opinion of  
5 management, all such claims and suits are adequately covered by insurance, or are provided for in  
6 the financial statements, or if not so covered or provided for, the results are not expected to  
7 material affect the Corporation's financial condition.

8 Following the dividend paid in 1987, in its December 31, 1988, public financial statements, Imasco  
9 repeated the foregoing statement. From the date of the payment of the first dividend in 1986 until  
10 within a year of the filing of the Bankruptcy Case, Imasco's financial statements reflected Flintkote  
11 as having a substantial positive net worth. The financial disclosures by Imasco were insufficient to  
12 alert a reader or creditor to the fact that the dividends had been made while Flintkote was insolvent or  
13 had rendered Flintkote insolvent, had caused it to be unable to meet its asbestos liabilities as they  
14 became due and were made in violation of California and other law, including California's Uniform  
15 Fraudulent Transfer Act and Delaware law respecting declaration of dividends, thereby tolling any  
16 applicable limitation period.

17 44. In 2003, S&C, acting as counsel to Flintkote, commissioned the first ever study of  
18 Flintkote's asbestos-related personal injury liabilities, in this case by Chambers Associates, a  
19 subsidiary of Navigant Consulting, Inc. ("Navigant"). Navigant issued a report dated August 19,  
20 2003. The Navigant report estimated indemnity payments from 2003 onward to range from \$1.7422  
21 billion to \$2.8139 billion, and total payments including defense costs to range from \$2.2746 billion to  
22 \$3.4781 billion.

23 45. In September, 2003, the shares of Flintkote stock were transferred to a trust, and  
24 Flintkote was no longer owned directly or indirectly by Imperial Tobacco.

25 **FIRST CAUSE OF ACTION**

26 (By Plaintiffs Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Negligence --  
Wrongful Death)

27 46. Plaintiffs Hopkins reallege and incorporate by reference each and all the allegations of  
28 paragraphs 1 through 45, inclusive.

1 47. At all times herein mentioned, defendants Plant, Uniroyal, and Imperial Tobacco, an  
2 alter ego of Flintkote, and each of them, were and are engaged in the business of researching,  
3 manufacturing, fabricating, designing, modifying, labeling, assembling, distributing, leasing, buying,  
4 offering for sale, supplying, selling, inspecting, endorsing, testing, authorizing, approving, approving,  
5 certifying, facilitating, warranting, rebranding, manufacturing for others, packaging, specifying,  
6 requiring, mandating, or otherwise directing and/or facilitates the use of, or advertising of a certain  
7 product, namely asbestos and other products containing asbestos.

8 48. At all times mentioned, said defendants, and each of them, singularly and jointly,  
9 negligently, and carelessly researched, manufactured, fabricated, designed, modified, tested or failed  
10 to test, abated or failed to abate, warned or failed to warn of the health hazards, labeled, assembled,  
11 distributed, leased, bought, offered for sale, supplied, sold, inspected, endorsed, contracted for  
12 installation, of, repaired, marketed, warranted, rebranded, manufactured for others, packaged and  
13 advertised, a certain product, namely asbestos, and other products containing asbestos, in that said  
14 products caused personal injuries to users, consumers, workers, bystanders and others, including the  
15 Decedent herein and Decedent's father, William Hopkins, (hereinafter collectively called "exposed  
16 persons"), while being used in a manner that was reasonably foreseeable, thereby rendering said  
17 products hazardous, unsafe, and dangerous for use by "exposed persons."

18 49. Said defendants, and each of them, had a duty to exercise due care in the pursuance of  
19 the activities mentioned above and defendants, and each of them, breached said duty of due care.

20 50. Said defendants, and each of them, knew, or should have known, and intended that the  
21 aforementioned asbestos and products containing asbestos and related products and equipment,  
22 would be transported by truck, rail, ship, and other common carriers, that in the shipping process the  
23 product would break, crumble, or otherwise be damaged; and/or that such products would be used for  
24 insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other  
25 applications, including, but not limited to unpacking, preparing, suing, sawing, drilling, chipping,  
26 hammering, scraping, sanding, breaking, maintaining, inspecting, "rip-out", and other manipulation,  
27 resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or  
28 handling "exposed persons", including decedent herein, would use or be in proximity to and exposed

1 to said asbestos fibers, which contaminated the packaging, products, environment, and clothing of  
2 persons working in proximity to said products, directly or through reentrainment.

3 51. Decedent has used, handled, or been otherwise exposed to asbestos and asbestos-  
4 containing products referred to herein in a manner that was reasonably foreseeable. Decedent's  
5 exposure to asbestos and asbestos-containing products, asbestos related injury, date of diagnosis, and  
6 employment status is, on current information and belief, as set forth at various locations and  
7 circumstances in Exhibit B, attached to this Complaint and incorporated by reference herein.

8 52. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease,  
9 cancer, and other serious diseases are caused by inhalation or ingestion of asbestos fibers without  
10 perceptible trauma and that said injury, damage, loss, or harm results from exposure to asbestos and  
11 asbestos-containing products over a period time.

12 53. Decedent suffered from a condition related to exposure of asbestos and asbestos-  
13 containing products. Decedent was not aware at the time of exposure that asbestos or asbestos-  
14 containing products presented risk of injury and/or disease.

15 54. As a direct and proximate result of the aforesaid conduct of said defendants, and each  
16 of them, Decedent suffered permanent injuries to his person, body, and health, including, but not  
17 limited to, asbestosis, other lung damage, and cancer and related sequelae, and the mental and  
18 emotional distress attendant thereto, and ultimately death, from the effect of exposure to asbestos  
19 fibers, all to his general damage in the sums to be proven at trial.

20 55. As a direct and proximate result of the aforesaid conduct of said defendants, and each  
21 of them, Decedent incurred liability for physicians, surgeons, nurses, hospital care, medicine,  
22 hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to  
23 plaintiffs at this time, and plaintiffs pray leave to amend this complaint accordingly when the true and  
24 exact cost thereof is ascertained. As a direct and proximate result of the aforesaid conduct of said  
25 defendants, and each of them, Decedent incurred liability for the reasonable value of medical care  
26 provided by Decedent's family members measured by, inter alia, the costs associated with the hiring  
27 a registered nurse, home hospice, or other service provider, the true and exact amount thereof being  
28 unknown to plaintiffs at this time, and plaintiffs pray leave to amend this complaint accordingly when

1 the true and exact costs are known or at time of trial.

2 56. As a further direct and proximate result of the said conduct of said defendants, and  
3 each of them, Decedent incurred loss of income, benefits, entitlements, wages, profits, and  
4 commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and  
5 extent of which are not yet known to plaintiffs; and leave is requested to amend this complaint to  
6 conform to proof at the time of trial.

7 57. As a further direct and proximate result of the said conduct of said defendants, and  
8 each of them, Decedent's exposure to asbestos and asbestos-containing products caused severe and  
9 permanent injury to Decedent, and ultimately Decedent died on September 27, 2005.

10 58. Said defendants, and each of them, and their officers, directors and managing agents  
11 participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should  
12 have known of, each of the acts set forth herein.

13 59. The herein-described conduct of said defendants, and each of them, was and is  
14 despicable, willful, malicious, fraudulent, outrageous, and in conscious or reckless disregard and  
15 indifference to the safety, health, and rights of "exposed persons", including decedent herein, giving  
16 rise to decedent's claim herein alleged for punitive damages against said defendants.

17 60. At all times prior to his death, Decedent was a faithful and dutiful spouse to plaintiff  
18 Marlene Hopkins, and parent to plaintiffs Michelle and Michael Hopkins.

19 61. As a direct and proximate result of the conduct of said defendants, and each of them,  
20 and the death of Decedent, Decedent's heirs have sustained pecuniary loss resulting from the loss of  
21 care, society, comfort attention, services, and support of Decedent all to the damage of decedent's  
22 heirs.

23 62. As a further direct and proximate result of the conduct of said defendants, and each of  
24 them, and the death of Decedent, decedent's heirs have incurred funeral expenses in an amount  
25 currently not ascertained.

26 63. As a direct and proximate result of the acts, omissions, and conduct of said, and each  
27 of them, as aforesaid, Decedent's exposure to harm or the Decedent as set forth in Exhibit B, attached  
28 to the complaint and incorporated by reference herein.



64. Decedent's personal injury claim against Flintkote was resolved by Judgment filed June 25, 2003, following Flintkote's acceptance of an offer to compromise in action number 408556 in this court.

65. Imasco completely dominated and controlled Flintkote, deliberately requiring Flintkote to divest itself of its operating businesses and assets solely for the benefit of Imasco. After the divestiture of its businesses, Flintkote did not manufacture or market any products or render any services to third parties. It served only as a vehicle for Imasco, resolving asbestos and other claims, including obtaining releases for Imasco, and prosecuting insurance coverage claims. By causing Flintkote to convert its assets and businesses to cash, and then stripping Flintkote of \$525,200,000, most of that cash, Imasco prevented Flintkote both from benefiting from the operating profits of the sold businesses and/or from investing the sale proceeds and using the principal plus earnings to pay claims.

66. In the years following the dividends, Flintkote's benefit programs were administered by Imasco's subsidiary, IHI. Flintkote, with IHI, filed consolidated financial statements and tax returns.

67. There became in 1986 and 1987 and thereafter such a unity of interest, and of ownership since Imasco owned indirectly 100% of Flintkote, that separate personalities of Flintkote and Imasco no longer existed. If the companies are treated as separate, inequitable results will follow.

WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant, Uniroyal, and Imperial Tobacco as set forth below.

#### SECOND CAUSE OF ACTION

(By Plaintiffs Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Products Liability – Wrongful Death)

68. Plaintiffs Hopkins incorporate by reference each and all the allegations of the First Cause of Action.

69. Defendants Plant, Uniroyal, and Imperial Tobacco, knew and intended that the above-referenced asbestos and asbestos-containing products, would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the

1 hazards involved in such use.

2 70. Said asbestos and asbestos-containing products were defective and unsafe for their  
3 intended purpose in that the inhalation or ingestion of asbestos fibers causes serious disease and/or  
4 death. The defect existed in the said products at the time they left the possession of defendants, and  
5 each of them. Said products did, in fact, cause personal injuries, including asbestosis, other lung  
6 damage, cancer, and death to "exposed persons", including Decedent herein, while being used in a  
7 reasonably foreseeable manner, thereby rendering the same defective, unsafe, and dangerous for use.

8 71. "Exposed persons" did not know of the substantial danger of using said products. Said  
9 dangers were not readily recognizable by "exposed persons". Said defendants, and each of them,  
10 further failed to adequately warn of the risks to which decedent and others similarly situated were  
11 exposed.

12 72. In researching, manufacturing, fabricating, designing, modifying, testing or failing to  
13 test, warning or failing to warn, labeling, assembling, distributing, leasing, buying, offering for sale,  
14 supplying, selling, inspecting, testing, authorizing, approving, certifying, facilitating, promoting,  
15 representing, endorsing, servicing, installing, contracting for installation, repairing, marketing,  
16 warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-  
17 containing products, said defendants, and each of them, did so with conscious disregard for the safety  
18 of "exposed persons" who came in contact with said asbestos and asbestos-containing products, in  
19 that said defendants, and each of them, had prior knowledge that there was a substantial risk of injury  
20 or death resulting from exposure to asbestos or asbestos-containing products, including, but not  
21 limited to, asbestosis, other lung damages, and cancer. Said knowledge was obtained, in part, from  
22 scientific studies performed by, at the request of, or with the assistance of, said defendants, and each  
23 of them, and which knowledge was obtained by said defendants, and each of them on or before 1930,  
24 and thereafter.

25 73. On or before 1930, and thereafter, said defendants, and each of them, were aware that  
26 members of the general public and other "exposed persons", who would come in contact with their  
27 asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos  
28 or asbestos-containing products could cause injury, and said defendants, and each of them, knew that



1 members of the general public and other "exposed persons", who came in contact with asbestos and  
2 asbestos-containing products, would assume, and in fact did assume, that exposure to asbestos and  
3 asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health  
4 and human life.

5 74. With said knowledge, said defendants, and each of them, opted to research, manufacture,  
6 fabricate, design, modify, label, assemble, distribute, lease, buy, offer for sale, supply, sell, inspect, service, install,  
7 contract for installation, repair, market, warrant, rebrand, manufacture for others, package and advertise said  
8 asbestos and asbestos-containing products without attempting to protect "exposed persons" from, or warn  
9 "exposed persons" of, the high risk of injury or death resulting from exposure to asbestos and asbestos-containing  
10 products. Rather than attempting to protect "exposed persons" from, or warn "exposed persons" of, the high  
11 risk of injury or death resulting from exposure to asbestos and asbestos-containing products, said  
12 defendants, and each of them, intentionally failed to reveal their knowledge of said risk, and  
13 consciously and actively concealed and suppressed said knowledge from "exposed persons" and  
14 members of the general public, thus impliedly representing to "exposed persons" and members of the  
15 general public that asbestos and asbestos-containing products were safe for all reasonably  
16 foreseeable uses. Said defendants, and each of them, engaged in this conduct and made these  
17 implied representations with the knowledge of the falsity of said implied representations.

18 75. The above-referenced conduct of said defendants, and each of them, was motivated by  
19 the financial interest of said defendants, and each of them, in the continuing, uninterrupted research,  
20 design, modification, manufacture, fabrication, labeling, assembly, distribution, lease, purchase, offer  
21 for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing,  
22 warranting, rebranding, manufacturing for others, packaging, specifying, requiring, mandating, or  
23 otherwise directing and/or facilitating the use of, or advertising of asbestos and asbestos-containing  
24 products. In pursuance of said financial motivation, said defendants, and each of them, consciously  
25 disregarded the safety of "exposed persons" and in fact were consciously willing and intended to  
26 permit asbestos and asbestos-containing products to cause injury to "exposed persons" and induced  
27 persons to work with and be exposed thereto, including plaintiff.

28 76. Plaintiffs allege that the aforementioned defendants, and each of them impliedly warranted their

1 asbestos and asbestos-containing products, to be safe for their intended use, but that their asbestos and asbestos-  
2 containing products, created an unreasonable risk of bodily harm to exposed persons.

3 77. Decedent relied upon defendants', and each of their representations, lack of warnings, and  
4 implied warranties of fitness of asbestos and their asbestos-containing products. As a direct, foreseeable, and  
5 proximate result thereof, Decedent suffered permanent injury and death as alleged herein.

6 78. As a direct and proximate result of the actions and conduct outlined herein,  
7 Plaintiffs Hopkins have suffered the injuries and damages herein alleged.

8 WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant, Uniroyal,  
9 and Imperial Tobacco as set forth below.

10 **THIRD CAUSE OF ACTION**

11 **(By Plaintiff Marlene Hopkins Against Plant, Uniroyal, and Imperial Tobacco for Loss of Consortium)**

12 79. Plaintiff Marlene Hopkins re-alleges and incorporates by reference each and all the  
13 allegations of the First and Second Causes of Action.

14 80. Decedent and plaintiff Marlene Hopkins were married on February 18, 1961, and at all  
15 times relevant to this action were husband and wife.

16 81. Prior to Decedent's injuries as alleged, Decedent was able and did perform duties  
17 as a spouse. Subsequent to the injuries and as a proximate result thereof, and until Decedent's  
18 death, Decedent was unable to perform the necessary duties as a spouse and the work and service  
19 usually performed in the care, maintenance, and management of the family home. As a  
20 proximate result thereof, plaintiff Marlene Hopkins was permanently deprived of the consortium of  
21 her spouse, including the performance of duties, all to plaintiff Marlene Hopkin's damages, in an  
22 amount presently unknown to plaintiff, but which will be proved at the time of trial.

23 82. Plaintiff Marlene Hopkins' discovery of the cause of Decedent's loss of consortium, as  
24 herein alleged, first occurred within one year last past from the filing of this Complaint.

25 83. As a direct and proximate result of the acts of said defendants, and the severe injuries  
26 and death caused thereby to Decedent as set forth in this complaint, plaintiff Marlene Hopkins has  
27 suffered loss of consortium, including but not by way of limitation, loss of services, marital relations,  
28 society, comfort, companionship, love, and affection of said spouse, and has suffered severe mental

1 and emotional distress, and general nervousness as a result thereof.

2 WHEREFORE, plaintiff Marlene Hopkins prays judgment against defendants Plant,  
3 Uniroyal, and Imperial Tobacco as set forth below.

4 **FOURTH CAUSE OF ACTION**

5 **(By Plaintiffs Hopkins Against Defendants Plant and Uniroyal for Negligence -- Survival)**

6 84. Plaintiffs Hopkins re-allege and incorporate by reference each and all the allegations  
7 of the First Cause of Action.

8 85. Plaintiffs bring this action pursuant to California Code of Civil Procedure section  
9 377.30 et. seq. As a direct and proximate result of the actions and conduct outlined herein, Decedent  
10 suffered the injuries and damages herein alleged. Plaintiffs are entitled to recover all damages  
11 sustained by Decedent as alleged above.

12 WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant and Uniroyal as  
13 set forth below.

14 **FIFTH CAUSE OF ACTION**

15 **(By Plaintiffs Hopkins Against Defendants Plant and Uniroyal to Products Liability -- Survival)**

16 86. Plaintiffs Hopkins re-allege and incorporate by reference each and all the allegations  
17 of the First and Second Causes of Action.

18 87. As a direct and proximate result of the exposure to defendants' products and the  
19 conduct outlined herein, Decedent has suffered the injuries and damages herein alleged.

20 88. Plaintiffs Hopkins are entitled to recover all damages sustained by Decedent as alleged  
21 above.

22 WHEREFORE, plaintiffs Hopkins pray judgment against defendants Plant and Uniroyal as  
23 set forth below.

24 **SIXTH CAUSE OF ACTION**

25 **(By Plaintiffs Hopkins Against Defendants Plant and Uniroyal for False Representation Under  
26 Restatement of Torts Section 402-B -- Survival)**

27 89. Plaintiffs Hopkins re-allege and incorporates by reference each and all the allegations  
28 of the First and Second Causes of Action.

90. At the aforementioned time when defendants Plant and Uniroyal, and each of them,

1 researched, manufactured, fabricated, designed, modified, tested or failed to test, inadequately  
2 warned or failed to warn, labeled, assembled, distributed, leased, bought, offered for sale, supplied,  
3 sold, inspected, serviced, authorized, approved, certified, facilitated, promoted, installed, represented,  
4 endorsed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for  
5 others, packaged, and advertised the said asbestos and asbestos-containing products, as hereinabove  
6 set forth, the defendants, and each of them, expressly and impliedly represented to members of the  
7 general public, including the purchasers and users of said product, and other "exposed persons",  
8 including the decedent herein and his employers, that asbestos and asbestos-containing products,  
9 were of merchantable quality, and safe for the use for which they were intended.

10 91. The purchasers and users of said asbestos and asbestos-containing products, and other  
11 "exposed persons", including the Decedent and his employers, relied upon said representations of  
12 said defendants, and each of them, in the selection purchase, and use of asbestos and asbestos-  
13 containing products.

14 92. Said representations by defendants, and each of them, were false and untrue, and  
15 defendants knew at the time they were untrue, in that the asbestos and asbestos-containing products,  
16 were not safe for their intended use, nor were they of merchantable quality as represented by  
17 defendants, and each of them, in that asbestos and asbestos-containing products have very dangerous  
18 properties and defects whereby said products cause asbestosis, other lung damages, and cancer, and  
19 have other defects that cause injury and damage to the users of said products and other "exposed  
20 persons", thereby threatening the health and life of said persons including decedent herein.

21 93. As a direct and proximate result of said false representations by defendants, and each of  
22 them, the Decedent suffered injury and death as set forth.

23 WHEREFORE, plaintiffs pray judgment against defendants Plant and Uniroyal, set forth  
24 below.

25 **SEVENTH CAUSE OF ACTION**

26 **(By Plaintiffs Hopkins Against Defendant Plant for Contractor Liability)**

27 94. Plaintiffs Hopkins re-allege and incorporate by reference each and all the allegations  
28 of the First and Second Causes of Action.

1 95. At all times mentioned herein, defendant Plant, owned, leased, maintained, managed,  
2 and/or controlled the premises listed on Exhibit B where Decedent was present. The information  
3 provided on Exhibit B is preliminary, based on recall over events covering many years and further  
4 investigation and discovery may produce more reliable information. Additionally, Decedent might  
5 have been present at these or other of Plant's premises at other locations and on other occasions.

6 96. Prior to and at said times and places, defendant Plant caused certain asbestos-  
7 containing insulation, other building materials, products, and toxic substances to be constructed,  
8 installed, maintained, used, supplied, replaced, repaired, and/or removed on each of the aforesaid  
9 respective premises, by their own workers and/or by various unqualified or unskilled contractors and  
10 caused the release of dangerous quantities of toxic asbestos fibers and other toxic substances into the  
11 ambient air and thereby created a hazardous and unsafe condition to decedent and other persons  
12 exposed to said asbestos fibers and toxic substances while present at said premises.

13 97. At all times mentioned herein, said defendant Plant knew or in the exercise of ordinary  
14 and reasonable care should have known, that the foregoing conditions and activities created a  
15 dangerous, hazardous, and unsafe condition, and unreasonable risk of harm and personal injury to  
16 decedent and other workers or persons so exposed present on each of the aforesaid respective  
17 premises.

18 98. At all times relevant herein, Decedent entered said premises and used or occupied  
19 each of said respective premises as intended and for Plant's benefit and advantage and at Plant's  
20 request and invitation. In so doing, Decedent was exposed to dangerous quantities of asbestos fibers  
21 and other toxic substances released into the ambient air by the aforesaid hazardous conditions and  
22 activities managed, maintained, initiated, and/or otherwise created, controlled, or caused by said  
23 defendant Plant.

24 99. Decedent at all times was unaware of the hazardous condition or the risk of  
25 personal injury created by the aforesaid presence and use of asbestos products and materials and  
26 other toxic substances on said premises.

27 100. At all times mentioned herein, Defendant Plant remained in control of the premises  
28 where Decedent was performing his work.

1 101. At all times mentioned herein, defendant Plant owed to decedent and others similarly  
2 situated a duty to exercise  
3 ordinary care in the management of such premises so as to avoid exposing workers such as  
4 decedent to an unreasonable risk of harm and to avoid causing injury to said person.

5 102. At all times mentioned herein, defendant Plant, knew, or in the exercise of ordinary  
6 and reasonable care should have known, that the premises that were in their control would be used  
7 without knowledge of, or inspection for, defects or dangerous conditions and that the persons present  
8 and using said premises would not be aware of the aforementioned hazardous conditions to which  
9 they were exposed on the premises.

10 103. At all times mentioned herein, defendant Plant negligently failed to maintain, manage,  
11 inspect, survey, or control said premises, or to abate, or correct, or to warn decedent of, the existence  
12 of the aforesaid dangerous conditions and hazards on or about said premises.

13 104. Prior to and at the times and places aforesaid, defendant Plant caused certain  
14 asbestos-containing insulation, other building materials, products, and toxic substances to be  
15 constructed, installed, maintained, used, replaced, repaired and/or removed on each of their  
16 aforesaid respective premises, by their own workers and/or by employing various contractors,  
17 and caused the release of dangerous quantities of toxic asbestos fibers and other toxic substances  
18 into the ambient air and thereby injured decedent.

19 105. At all times mentioned herein, defendant Plant:

20 a. Should have recognized that the work of said contractors would create during  
21 the progress of the work, dangerous, hazardous, and unsafe conditions, which could or would  
22 harm decedent and others unless special precautions were taken;

23 b. Knew or had reason to know, that the contractors it had selected and hired to  
24 install, remove, abate, or otherwise handle asbestos-containing materials were unfit, unskilled,  
25 unlicensed, or otherwise unqualified to do so;



1 c. Failed to use reasonable care to discover whether the contractors it selected and  
2 hired to install, remove, abate, or otherwise handle asbestos-containing materials were  
3 competent, or qualified to do so.

4 106. In part, Decedent was exposed to dangerous asbestos fibers and other toxic  
5 substances by reason of such contractors' failure to take the necessary precautions.

6 107. The work of contractors on premises controlled by defendant Plant created an unsafe premise  
7 and an unsafe work place by reason of the release of dangerous quantities of toxic substances, including but not  
8 limited to asbestos.

9 108. Prior to and at said times and places, defendant Plant was subject to certain ordinances,  
10 standards, statutes, and other government regulations promulgated by the United States Government,  
11 the State of California, and others, including but not limited to the General Industry Safety Orders  
12 promulgated pursuant to California Labor Code § 6400 and the California Administrative Code under  
13 the Division of Industrial Safety, Department of Industrial Relations, including but not limited to  
14 Title VHL Group 9 (Control of Hazardous Substances), Article 81, § 4150, § 4106, § 4107, and §  
15 4108, and Threshold Limit Values as documented for asbestos and other toxic substances under  
16 Appendix A, Table 1 of said Safety Orders; additionally, California Health and Safety Code § 40.200,  
17 et seq., which empowers the Bay Area Air Quality Management District (B.A.A.Q.D.) to promulgate  
18 regulations including, but not limited to B.A.A.O.D. Regulation 11, Rules 2 and 14, Title 40 Code of  
19 Federal Regulations. Chapter 1, Part 61, et seq. -- The National Emission Standards for Hazardous Air  
20 Pollutants, which required defendant Plant to provide specific safeguards or precautions to prevent or  
21 reduce the inhalation of asbestos dust and other toxic fumes or substances; and said defendant Plant  
22 failed to provide the required safeguards and precautions. Defendant's violations of said codes  
23 include, but are not limited to:

24 (a) Failing to comply with statutes and allowing ambient levels of airborne  
25 asbestos fiber to exceed the permissible/allowable levels with regard to the aforementioned  
26 statutes;

27 (b) Failing to segregate work involving the release of asbestos or other toxic  
28 dusts;

- 1 (c) Failing to suppress dust using prescribed ventilation techniques;  
2 (d) Failing to suppress dust using prescribed "wet down" techniques;  
3 (e) Failing to warn or educate decedent or others regarding asbestos or other  
4 toxic substances on the premises;  
5 (f) Failing to provide approved respiratory protection devices;  
6 (g) Failing to ensure "approved" respiratory protection devices were used  
7 adequately;  
8 (h) Failing to provide for an on-going health screening program for those  
9 exposed to asbestos on the premises;  
10 (i) Failing to provide adequate housekeeping and clean-up of the work place;  
11 (j) Failing to adequately warn of the hazards associated with asbestos as  
12 required by these statutes;  
13 (k) Failing to adequately report renovation and disturbance of asbestos-containing  
14 materials, including but not limited to B.A.A.O.M.D. Regulation 11, Rules 2 and 14;  
15 (l) Failing to have an asbestos removal supervisor as required by regulation;  
16 (m) Failing to get approval for renovation as required by statutes; and  
17 (n) Failing to maintain records as required by statute.

18 109. Defendant Plant was the "statutory employer" of decedent as defined by the California  
19 Labor Code and California case law.

20 110. Decedent at all times was unaware of the hazardous condition or the risk of personal  
21 injury created by defendant's violation of said regulations, ordinances, or statutes.

22 111. At all times mentioned herein, Decedent was a member of the class of persons whose  
23 safety was intended to be protected by the regulations, standards, statutes, or ordinances described in  
24 the foregoing paragraphs.

25 112. At all times mentioned herein, said defendant Plant, knew, or in the exercise of



1 ordinary and reasonable care should have known, that the premises that were in its control would be  
2 used without knowledge of, or inspection for, defects or dangerous conditions, that the persons present  
3 and using said premises would not be aware of the aforesaid hazardous conditions to which they were  
4 exposed on the premises, and that such persons were unaware of the aforesaid violations of codes,  
5 regulations, and statutes.

6 113. As a proximate result of the foregoing, Decedent developed asbestos-related illness,  
7 which has caused great injury and disability to Decedent, and ultimately death, as previously set  
8 forth, and plaintiffs have suffered damages as herein alleged.

9 WHEREFORE, plaintiffs Hopkins pray judgment against defendant Plant, as set forth below.

10 **EIGHTH CAUSE OF ACTION**

11 **(By The Flintkote Plaintiffs Against Imperial Tobacco For Declaration of Alter Ego Liability)**

12 114. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
13 allegations of paragraphs 1 through 45 and 65 through 67, inclusive.

14 115. An actual controversy exists between The Flintkote Plaintiffs and Imperial Tobacco  
15 arising from Imasco's domination and control of Flintkote, including Imasco's causing Flintkote to  
16 create the subsidiaries, isolate the asbestos liabilities, sell the subsidiaries, and declare and pay the  
17 Dividends, and the use of Flintkote by Imasco solely for Imasco's own purposes, as set forth herein.

18 116. The Flintkote Plaintiffs contend that Imperial Tobacco is Flintkote's alter ego and is  
19 responsible to pay asbestos-related claims asserted against Flintkote, such that if The Flintkote  
20 Plaintiffs are correct, the burden of those claims will be borne in whole or in part by Imperial  
21 Tobacco.

22 117. The Flintkote Plaintiffs are informed and believe, and upon such information and  
23 belief alleges, that Imperial Tobacco disagrees with each of The Flintkote Plaintiffs' contentions.

24 118. The Flintkote Plaintiffs have the right to assert alter ego claims against Flintkote's  
25 former indirect parent Imperial Tobacco.

26 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
27 below.  
28

1 NINTH CAUSE OF ACTION  
2 (By The Flintkote Plaintiffs Against Imperial Tobacco For Receiving Illegal Dividends)

3 119. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
4 allegations of paragraphs 1 through 45, inclusive.

5 120. The dividends of \$170,200,000 in 1986 and \$355,000,000 in 1987 were not payable  
6 out of Flintkote's net profits for either the year in which the dividend was declared or the preceding  
7 fiscal year.

8 121. The dividends in 1986 and 1987 (collectively, the "Dividends") could be paid only out  
9 of surplus defined as the amount in excess of Flintkote's capital by which its assets exceeded its  
10 liabilities. Flintkote's asbestos related personal injury and its other liabilities exceeded its assets.

11 122. Imasco and its lawyers, S&C, caused the directors to declare and pay the dividends  
12 when they were not authorized under the dividend statutes.

13 123. Imasco actively procured and participated in the declarations of the illegal dividends,  
14 knew the receipt of the dividends was improper, and reaped the benefits of them.

15 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
16 below.

17 TENTH CAUSE OF ACTION  
18 (By The Flintkote Plaintiffs Asserting the Rights of a Creditor,  
19 Against Imperial Tobacco for Recovery of Illegal Dividends)

20 124. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
21 allegations of the Ninth Cause of Action.

22 125. Flintkote is operating its business and conducting its affairs as the debtor and debtor in  
23 possession in the Bankruptcy Case. Flintkote may recover any transfer of money that is voidable  
24 under applicable state law by a creditor holding an unsecured claim that is allowable in the  
25 Bankruptcy Case.

26 126. The transfers of the Dividends, \$170,200,000 on or about December 30, 1986, and  
27 \$355,000,000 on or about August 31, 1987, were transfers of interests of the debtor in property.

28 127. At the time of the Dividends, there existed one or more individuals (a) who had  
suffered from inherently unknowable injuries to a blameless ignorant party as a result of exposure to  
asbestos products manufactured or sold by Flintkote prior to the payment of the Dividends, tolling the

1 applicable limitation periods until such time as the claimant was chargeable with knowledge that his  
2 condition was attributable to asbestos exposure, (b) who were creditors of Flintkote due to exposure  
3 to asbestos products manufactured or sold by Flintkote prior to the payment of the Dividends, and (c)  
4 who hold allowable claims against Flintkote and its bankruptcy estate.

5 128. From and after the date of each Dividend, until at least September 29, 2003, Imasco  
6 controlled and dominated Flintkote, and did not disclose, and caused Flintkote not to disclose the true  
7 nature of Flintkote's financial condition to creditors. Creditors did not know and could not have  
8 known that the transfer of the dividends to Imasco rendered Flintkote insolvent.

9 129. The Dividends are invalid and avoidable because the Dividends were paid at a time  
10 when Flintkote did not have a surplus of assets over liabilities. Because of Imasco's domination and  
11 control of Flintkote and because of the suppression of Flintkote's true financial condition in the  
12 public financial reporting Imasco released in Canada, this fact was not known and could not  
13 reasonably have been known to creditors of Flintkote, including asbestos disease claimants. The  
14 Flintkote Plaintiffs may recover the Dividends from Imasco who was the entity for whose benefit  
15 such transfers were made. To the extent the Dividends passed through entities before their delivery  
16 to Imasco, such entities were mere conduits, or to the extent such intermediate entities were not mere  
17 conduits and the transfers were not made for Imasco's benefit, Imasco's ultimate receipt of the  
18 Dividends was not for value or in good faith.

19 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
20 below.

21 **ELEVENTH CAUSE OF ACTION**

22 **(By The Flintkote Plaintiffs Asserting the Rights of a Creditor Against Imperial Tobacco For  
23 Recovery of Fraudulent Transfers)**

24 130. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
25 allegations of the Ninth and Tenth Causes of Action.

26 131. At the time of the Dividends, or within the applicable limitation period thereafter,  
27 there existed (a) one or more individuals who had asbestos-related personal injury lawsuits on file  
28 against Flintkote, and those lawsuits remained on file until May 1, 2004, or (b) one or more  
individuals who suffered from asbestos-related diseases arising as a result of exposure to Flintkote

1 products who suffered from inherently unknowable injuries and who was blamelessly ignorant,  
2 thereby tolling any applicable limitation periods until such time as the each such individual was  
3 chargeable with knowledge that his condition was attributable to asbestos exposure, or (c) one or  
4 more individuals who suffered from asbestos-related diseases arising as a result of exposure to  
5 Flintkote products who did not know and could not reasonably have been known of Flintkote's true  
6 financial condition because of Imasco's domination and control of Flintkote and because of the  
7 suppression of Flintkote's true financial condition in the public financial reporting Imasco released in  
8 Canada, some or all of which serve to toll the applicable limitations period.

9 132. The Dividend of \$170,200,000 was made without receipt of fair consideration by  
10 Flintkote who: (a) was or would be rendered insolvent by the transfer and/or (b) was about to be  
11 engaged in a business, paying asbestos claims, for which its property remaining after the Dividend  
12 was unreasonably small capital.

13 133. When the Dividend of \$355,000,000 was paid in 1987, it constituted a fraudulent  
14 transfer in that Flintkote received no reasonably equivalent value for it and one or more of the  
15 following was true: (a) Flintkote was insolvent or became insolvent as a result of the transfer, or (b)  
16 Flintkote was engaged in or about to engage in the business of paying asbestos claims for which  
17 Flintkote's assets were unreasonably small in relation to the business, or (c) Flintkote reasonably  
18 should have believed that it would incur debts beyond its ability to pay as they became due.

19 134. The separation of Flintkote's asbestos liabilities from its valuable operating assets as a  
20 result of the formation of subsidiary corporations, the sale of those subsidiary corporations; and the  
21 transfer of the Dividends to Imasco, constituted an integrated scheme of transfers orchestrated by  
22 Imasco with actual intent to hinder, delay or defraud one or more present or future creditors of  
23 Flintkote, implicating at least the following badges of fraud:

- 24 • The proceeds of the scheme were transferred to an insider;
- 25 • The resulting financial condition of Flintkote was concealed;
- 26 • The transfers, including the separation of asbestos liabilities from operating assets,  
27 occurred because Flintkote had been sued and threatened with additional suits;
- 28 • The transfers, including the separation of asbestos liabilities from operating assets,

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1 involved substantially all of Flintkote's assets;

- 2 • The consideration ultimately received by Flintkote at the conclusion of the integrated  
3 scheme was not reasonably equivalent to the value of the assets transferred;  
4 • Flintkote was insolvent or became insolvent shortly after the transfers comprising the  
5 integrated scheme;  
6 • The transfers comprising the integrated scheme were made after substantial contingent  
7 and unmatured indebtedness had been incurred, but before such indebtedness had  
8 matured.

9 135. The Flintkote Plaintiffs may recover the Dividends from Imasco who was the entity  
10 for whose benefit such transfers were made. To the extent the Dividends passed through entities  
11 before their delivery to Imasco, such entities were mere conduits, or to the extent such intermediate  
12 entities were not mere conduits and the transfers were not made for Imasco's benefit, Imasco's  
13 ultimate receipt of the Dividends was not for value or in good faith.

14 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
15 below.

16 **TWELFTH CAUSE OF ACTION**

17 **(By The Flintkote Plaintiffs Against Imperial Tobacco for Breach of Fiduciary Duty)**

18 136. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
19 allegations of the Ninth, Tenth, and Eleventh Causes of Action.

20 137. The directors of Flintkote owed a fiduciary duty to Flintkote and to its creditors  
21 because by reason of its asbestos-related liabilities, Flintkote was insolvent or in the vicinity of  
22 insolvency. Flintkote directors were obliged to consider whether, and reasonably should have  
23 believed that, Flintkote would incur debts by reason of asbestos liabilities beyond its ability to pay as  
24 they became due.

25 138. By reason of the foregoing, Imasco prevented the Flintkote directors from complying  
26 with their fiduciary duties in declaring the dividends and ordering them paid.

27 139. Imasco, now Imperial Tobacco, actively procured and participated in the failure to  
28 comply with fiduciary duties and reaped the benefits of them.

1 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
2 below.

3 THIRTEENTH CAUSE OF ACTION

4 (By The Flintkote Plaintiffs Against S&C for Breach of Duty and Negligence)

5 140. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
6 allegations of the Ninth through the Twelfth Causes of Action.

7 141. S&C as lawyers represented Flintkote in connection with the 1986 and 1987  
8 dividends. S&C also represented Imasco with respect to the same subject matter. S&C continued to  
9 represent Flintkote with respect to the matters alleged herein until within one year of the filing of the  
10 Bankruptcy Case.

11 142. The relation between attorney and client is a fiduciary relation of the very highest  
12 character.

13 143. S&C had a duty without informed written consent of each client not to accept  
14 representation of more than one client in a matter in which the interests of the clients potentially  
15 conflict and not to accept or continue representation of more than one client in which the interests of  
16 the clients actually conflict. Absent consent of both clients after full disclosure, S&C had a duty not  
17 to accept or continue employment of both clients if it would be likely to involve S&C in representing  
18 differing and adverse interests.

19 144. S&C breached its duty and accepted and continued representation of Flintkote and  
20 Imasco in connection with the Dividends, which was a matter in which the interests of the clients  
21 were in stark conflict, adverse, and differing.

22 145. Flintkote did not give written consent to S&C's conflicting representation of differing  
23 interests.

24 146. S&C had a duty to use reasonable care in advising Flintkote. S&C without reasonable  
25 care advised the Flintkote directors that they could go forward with the 1986 dividend. S&C in 1987  
26 without reasonable care misrepresented California law to Flintkote as respects rules governing  
27 potentially fraudulent transfers. S&C in 1987 also represented, without reasonable care, to the board  
28 that the directors could rely upon the RPC report as an appraisal and thus were protected by a



1 principle that directors are entitled to rely on statements in an appraisal by an appraiser selected with  
2 reasonable care by the board. But the RPC report was not an appraisal of Flintkote's asbestos-related  
3 personal injury liabilities, and RPC was not selected by the board, but rather by Imasco's counsel.

4 147. The conflicted representation and the misrepresentations by S&C proximately caused  
5 the declaration and payment of the dividends.

6 WHEREFORE The Flintkote Plaintiffs pray judgment against S&C as set forth below.

7 **FOURTEENTH CAUSE OF ACTION**

8 (By The Flintkote Plaintiffs Against Imperial Tobacco For Constructive Trust)

9 148. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
10 allegations of the Ninth through the Thirteenth Causes of Action.

11 149. By reason of the foregoing, Imperial Tobacco holds the dividend payments received  
12 through the wrongful acts and the complete dominance, control, and authority Imasco held over  
13 Flintkote, and by reason of the mistakes engendered by the conflicted representation and negligent  
14 advice provided by Imasco's lawyers, shared with Flintkote, as set forth above. The Flintkote  
15 Plaintiffs have the right to those dividends and Imperial Tobacco holds them as a constructive trustee  
16 for the benefit of The Flintkote Plaintiffs.

17 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
18 below.

19 **FIFTEENTH CAUSE OF ACTION**

20 (By The Flintkote Plaintiffs Against Imperial Tobacco For Restitution)

21 150. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
22 allegations of the Ninth through the Thirteenth Causes of Action.

23 151. The declarations of the Dividends were invalid because they were the result of  
24 conflicted legal representation and erroneous legal advice given by Imasco's lawyers, shared with  
25 Flintkote.

26 152. Imasco was the recipient of the Dividends under circumstances where it directly and  
27 through its lawyers wrongfully procured payment of the Dividends.

28 153. The Flintkote Plaintiffs are entitled to restitution from Imperial Tobacco of the  
payments made pursuant to the tainted and invalid declarations of the Dividends.

1 WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth  
2 below.

3 **SIXTEENTH CAUSE OF ACTION**

4 (By The Flintkote Plaintiffs against Imperial Tobacco for Declaratory Relief)

5 154. The Flintkote Plaintiffs re-allege and incorporate by reference each and all the  
6 allegations of the Ninth through the Fifteenth Causes of Action.

7 155. An actual controversy exists between The Flintkote Plaintiffs and Imperial Tobacco  
8 arising from the Dividend Repayment Contract of July 27, 1987 ("Dividend Repayment Contract").

9 156. The Flintkote Plaintiffs contend that the dividends were improperly paid within the  
10 meaning of the Dividend Repayment Contract because they were paid under one or more of the  
11 following circumstances

- 12 • as illegal dividends;
- 13 • as a fraudulent conveyance or fraudulent transfer under California law;
- 14 • in breach of fiduciary duty aided and abetted by Imasco;
- 15 • as products of conflicted and tainted legal representation by S&C;
- 16 • as products of negligent legal advice by S&C;
- 17 • as improper by reason of having been induced by the promise in 1986 by Imasco to  
18 repay, and by the Dividend Repayment Contract in 1987;
- 19 • as otherwise improper within the meaning of the Dividend Repayment Contract.

20 157. The Flintkote Plaintiffs are informed and believe, and upon such information and  
21 belief alleges, that Imperial Tobacco disagrees with each of The Flintkote Plaintiffs' contentions.

22 158. In the event the court finally determines that the 1986 and 1987 dividends were  
23 improperly paid, then Imperial Tobacco will be obligated to repay to Flintkote any amounts (up to the  
24 full amount of the dividends) that are finally determined by a court of competent jurisdiction to be  
25 due to Flintkote creditors but that cannot be satisfied out of assets of Flintkote because of the  
26 dividends finally determined to have been improperly paid, upon entry of the judgments described in  
27 the DRC.

28 159. The Flintkote Plaintiffs seek a declaration as to the legal rights and duties of the



parties as to propriety of the dividends and duties arising from dividends having been improperly paid.

WHEREFORE, The Flintkote Plaintiffs pray judgment against Imperial Tobacco as set forth below.

PRAYER

WHEREFORE, plaintiffs pray judgment:

1. On the First and Second Causes of Action for recovery by plaintiffs Hopkins against defendants Plant, Uniroyal, and Imperial Tobacco jointly and severally, of damages according to proof;

2. On the Third Cause of Action for recovery by plaintiff Marlene Hopkins against defendants Plant, Uniroyal, and Imperial Tobacco jointly and severally, of damages according to proof;

3. On the Fourth, Fifth, and Sixth Causes of Action, for recovery by plaintiffs Hopkins against defendants Plant and Uniroyal of damages according to proof;

4. On the Seventh Cause of Action, for recovery by plaintiffs Hopkins against defendant Plant of damages according to proof;

5. On the Eighth Cause of Action, for an order declaring that Imperial Tobacco is liable as the alter ego of Flintkote with respect to asbestos-related liabilities and is responsible to pay such liabilities;

6. On the Ninth, Tenth, Eleventh, and Twelfth Causes of Action, for recovery by The Flintkote Plaintiffs from Imperial Tobacco in the amount of \$525,200,000, plus interest, or such other amount as may be proved;

7. On the Thirteenth Cause of Action, for recovery by The Flintkote Plaintiffs from S&C in the amount of \$525,200,000 plus interest, or such other amount as may be proved;

8. On the Fourteenth and Fifteenth Causes of Action, for recovery by The Flintkote Plaintiffs from Imperial Tobacco in the amount of \$525,200,000, plus interest, or such other amount as may be proved;

9. On the Sixteenth Cause of Action, for an order declaring and determining in favor of

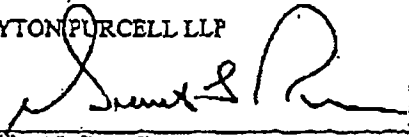
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No. 2023 P. 38/38

1 The Flintkote Plaintiffs that the \$170,200,000 dividend declared and paid in December 1986 and the  
2 \$355,000,000 dividend declared and paid in July 1987 by Flintkote were improperly paid within the  
3 meaning of the Dividend Recovery Contract letter from Inasco dated July 27, 1987, and that upon  
4 the occurrence of the remaining determinations described in the Dividend Recovery Contract, that  
5 Imperial Tobacco will be obligated to repay to Flintkote the amounts (up to the full amount of the  
6 dividends) finally determined to be due to Flintkote creditors but that cannot be satisfied out of the  
7 assets of Flintkote because of the payment of the dividends.

8 Date: 4-26-06

BRAYTON PURCELL LLP

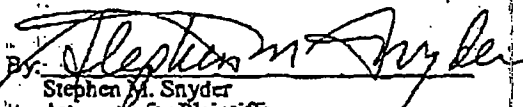
By:   
Gilbert L. Purcell  
Attorneys for Plaintiff Marlene Hopkins,  
Michelle Hopkins, and Michael Hopkins

9  
10  
11 Additional Counsel for Plaintiffs The Flintkote  
12 Company The Official Committee of:  
13 Asbestos Personal Injury Claimants, and  
James J. McMonagle as the Legal Representative  
for Future Asbestos Personal Injury Claimants:

14 Eliot S. Jubelirer (061654)  
15 Jean L. Bertrand (083250)  
16 Morgenstein & Jubelirer  
17 One Market, Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105  
Telephone (415) 901-8700

SNYDER MILLER & ORTON LLP

18 Alan Pedlar (State Bar No. 72216)  
19 The Law Office of Alan Pedlar  
20 1112 Via Malibu  
Aptos, CA 95083  
Telephone (831) 688-2667

By:   
Stephen M. Snyder  
Attorneys for Plaintiffs  
The Flintkote Company, The Official  
Committee of Asbestos Personal Injury  
Claimants, and James J. McMonagle as the  
Legal Representative for Future Asbestos  
Personal Injury Claimants

21 Kelly C. Wooster (State Bar No. 41196)  
22 112 Rock Creek Court  
23 P.O. Box 62  
Copperopolis, CA 95228  
Telephone: (209) 785-2437

Snyder  
Miller  
& Orton  
LLP

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32

FIRST AMENDED COMPLAINT

CASE N°: CGC-06-450944

UNITED STATES OF AMERICA  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO


MARLENE HOPKINS et al  
Plaintiffs  
vs.

IMPERIAL TOBACCO CANADA LIMITED et al  
Defendants

- Attestation.
- First Amended Complaint for Damages (...)

COPY FOR:

IMPERIAL TOBACCO CANADA LIMITED  
3711 rue Saint-Antoine  
Montréal QC H4C 3P6

  
Saulnier Robillard Lortie  
Huissiers de Justice  
Charles Laliberté, H.J.

02, 05/06/2006  
hrs

**Exhibit B-9**

**Exhibit B-9**

The document referenced as Exhibit B-9 was unavailable on the Superior Court of California County of San Francisco's Docket System as of 5:00 p.m. E.S.T., April 4, 2006. ITCAN will supplement the record once this document is available.

**Exhibit B-10**

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

Loren Kieve (Bar No. 56280)  
201 Sansome Street, 6th Floor  
San Francisco, California 94104  
Telephone: (415) 986-5700  
Facsimile: (415) 986-5707

Counsel for Defendant  
Imperial Tobacco Canada Limited

ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

MAY - 4 2006

GORDON PARK-LI, Clerk

BY: Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN THE COUNTY OF SAN FRANCISCO

MARLENE HOPKINS, Individually, as  
Wrongful Death Heir, and as Successor-in-  
Interest to NORMAN HOPKINS, JR.,  
Deceased; and MICHELLE HOPKINS, and  
MICHAEL HOPKINS, as Legal Heirs of  
NORMAN HOPKINS, Deceased, THE  
FLINTKOTE COMPANY, THE OFFICIAL  
COMMITTEE OF THE ASBESTOS  
PERSONAL INJURY CLAIMANTS, and  
JAMES J. MCMONAGLE as the LEGAL  
REPRESENTATIVE FOR FUTURE  
ASBESTOS PERSONAL INJURY  
CLAIMANTS,

Plaintiffs,

v.

PLANT INSULATION COMPANY;  
UNIROYAL HOLDING, INC.; IMPERIAL  
TOBACCO CANADA LIMITED;  
SULLIVAN & CROMWELL LLP; and  
DOES 1 through 100,

Defendants.

CASE NO. CGC06450944

**DEFENDANT IMPERIAL TOBACCO  
CANADA LIMITED'S ANSWER TO  
FIRST AMENDED COMPLAINT FOR  
DAMAGES AND RELIEF AGAINST  
ALTER EGO, FOR RECOVERY OF  
DIVIDENDS, FOR RECOVERY OF  
FRAUDULENT TRANSFERS, FOR  
DAMAGES BY REASON OF BREACH  
OF FIDUCIARY DUTY, FOR  
DAMAGES FOR BREACH OF DUTY  
AND NEGLIGENCE, TO ENFORCE  
CONSTRUCTIVE TRUST, FOR  
RESTITUTION, AND FOR  
DECLARATORY RELIEF**

Filing Date: May 4, 2006  
Trial Date: None Set

Defendant IMPERIAL TOBACCO CANADA LIMITED ("ITCAN"), for itself alone and  
for no other defendant, hereby answers the unverified first amended complaint (the "Complaint")  
of MARLENE HOPKINS, MICHELLE HOPKINS, MICHAEL HOPKINS (collectively, the  
"Hopkins"), THE FLINTKOTE COMPANY ("Flintkote"), THE OFFICIAL COMMITTEE OF  
THE ASBESTOS PERSONAL INJURY CLAIMANTS, and JAMES J. MCMONAGLE as the

IMPERIAL TOBACCO CANADA LIMITED'S ANSWER

1 LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS PERSONAL INJURY CLAIMANTS  
2 (together with the Hopkins and Flintkote, the "Plaintiffs") for damages and relief against alter  
3 ego, for recovery of dividends, for recovery of fraudulent transfers, for damages by reason of  
4 breach of fiduciary duty, for damages for breach of duty and negligence, to enforce constructive  
5 trust, and for declaratory relief.

6  
7 GENERAL DENIAL

8 Pursuant to California Code of Civil Procedure § 431.30(d), ITCAN generally and  
9 specifically denies each and every allegation of the unverified Complaint, denies that Plaintiffs  
10 have been damaged in the sum or sums alleged therein or in any sums whatsoever, denies that  
11 Plaintiffs are entitled to declaratory relief, and denies that Plaintiffs are entitled to any relief  
12 whatsoever in this action.

13  
14 DEFENSES

15 ITCAN sets forth the following affirmative or additional defenses. In asserting these  
16 defenses, ITCAN is not assuming the burden to establish any fact or proposition where that  
17 burden is properly imposed on Plaintiffs.

18  
19 FIRST DEFENSE

20 (Failure to State a Claim Upon Which Relief Can Be Granted)

21 1. The Complaint, and each purported cause of action alleged therein, fails to state  
22 facts sufficient to constitute any cause of action against ITCAN.

23  
24 SECOND DEFENSE

25 (Lack of Standing)

26 2. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing  
27 to assert any or all of the causes of action alleged in the Complaint.



1  
2 THIRD DEFENSE

3 (Personal Jurisdiction)

4 3. This Court lacks personal jurisdiction over ITCAN, a company organized under  
5 the laws of Canada and domiciled in Montreal, Quebec, and thus this Complaint should be  
6 dismissed.

7  
8 FOURTH DEFENSE

9 (Canadian Law)

10 4. Plaintiffs' claims against ITCAN may not be asserted in this Court pursuant to  
11 applicable Canadian law.

12  
13 FIFTH DEFENSE

14 (Subject Matter Jurisdiction)

15 5. This Court lacks subject matter jurisdiction over some or all of the counts of the  
16 Complaint and thus those portions of the Complaint lacking jurisdiction should be dismissed.

17  
18 SIXTH DEFENSE

19 (Statute of Limitations)

20 6. Plaintiffs' claims are barred, in whole or in part, by applicable statutes of  
21 limitation.

22  
23 SEVENTH DEFENSE

24 (Statute of Repose)

25 7. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of  
26 repose.

1 EIGHTH DEFENSE

2 (Improper Joinder)

3 8. Plaintiffs are improperly joined because their claims do not arise from the same  
4 transaction or occurrence, do not arise from a common nucleus of operative facts, do not raise  
5 common questions of law, and because plaintiffs and their injuries do not all have a substantial  
6 connection to the State of California.

7  
8 NINTH DEFENSE

9 (Fraudulent Joinder)

10 9. The Complaint should be dismissed or, at least, parties or claims should be  
11 transferred to another jurisdiction both due to Plaintiffs' failure to properly join claims and  
12 parties and due to Plaintiffs misjoinder of claims and parties, which was fraudulently designed to  
13 confer jurisdiction on this Court over claims and/or parties that it does not and would not  
14 otherwise have jurisdiction.

15  
16 TENTH DEFENSE

17 (Failure to Join Indispensable Parties)

18 10. To the extent the Complaint fails to name indispensable parties, the Complaint  
19 must be dismissed or, alternatively, this civil action should be stayed pending other appropriate  
20 relief by the Court.

21  
22 ELEVENTH DEFENSE

23 (Improper Venue)

24 11. Venue of this civil action does not properly lie in San Francisco County,  
25 California.

1 TWELFTH DEFENSE

2 (Forum Non Conveniens)

3 12. Some or all of Plaintiffs' claims are barred in this Court by the common law  
4 defense of forum non conveniens.

5  
6 THIRTEENTH DEFENSE

7 (Equitable Defenses)

8 13. The Complaint, and each purported cause of action alleged therein, is barred by  
9 the equitable doctrines of estoppel, waiver, laches and/or unclean hands.

10  
11 FOURTEENTH DEFENSE

12 (Failure to Mitigate Damages)

13 14. Plaintiffs have failed to take reasonable, necessary, appropriate and feasible steps  
14 to mitigate their alleged damages, and to the extent of such failure to mitigate, Plaintiffs should  
15 be barred from recovering some or all of the alleged damages they seek.

16  
17 FIFTEENTH DEFENSE

18 (Waiver and Release)

19 15. The Complaint, and each purported cause of action alleged therein, is barred to the  
20 extent Plaintiffs have waived, released, relinquished or abandoned any claim for relief against  
21 ITCAN with respect to the matters that are the subject of the Complaint.

22  
23 SIXTEENTH DEFENSE

24 (Applicable Law)

25 16. ITCAN asserts that Plaintiffs' claims, or some of them, are or may be barred or  
26 otherwise limited or affected by the application of provisions of the law or statutes of states or  
27 jurisdictions other than the State of California.

1  
2 SEVENTEENTH DEFENSE

3 (Comparative Fault)

4 17. ITCAN is informed and believes and therefore alleges that to the extent some or  
5 all of the Plaintiffs suffered or sustained any loss, damage or injury as alleged in the Complaint,  
6 such loss, damage, or injury was the direct and proximate result of the acts and omissions of the  
7 Hopkins, or other persons or entities for whom ITCAN is not legally responsible.

8  
9 EIGHTEENTH DEFENSE

10 (Defendant's Practices Not Unlawful)

11 18. To the extent Plaintiffs prove ITCAN or its predecessors conducted any of the  
12 activities alleged in the Complaint, those activities conformed with and were done pursuant to  
13 any and all applicable statutes and regulations and were not unlawful.

14  
15 NINETEENTH DEFENSE

16 (Separate Corporate Identities)

17 19. The alleged causes of action are barred, in whole or in part, because the separate  
18 corporate identities that existed between and among ITCAN and its predecessors, and all of  
19 ITCAN's and its predecessor's direct and indirect subsidiaries, including Flintkote, were  
20 maintained at all times relevant to the Complaint.

21  
22 TWENTIETH DEFENSE

23 (No Injury Or Damage)

24 20. ITCAN denies that Plaintiffs have suffered any injury or damage whatsoever, and  
25 further denies it is liable to Plaintiffs for any of the injury or damage claimed or for any injury or  
26 damage whatsoever.

1  
2 TWENTY-FIRST DEFENSE

3 (No Proximate Causation)

4 21. To the extent Plaintiffs suffered injury or damage, which ITCAN denies, such  
5 injury or damage was not proximately caused by any conduct or inaction of ITCAN or its  
6 predecessors, or was not foreseeable, or both.

7  
8 TWENTY-SECOND DEFENSE

9 (Ratification)

10 22. The alleged causes of action are barred, in whole or in part, because of  
11 ratification, agreement, assent, acquiescence or consent to ITCAN's or its predecessor's alleged  
12 conduct.

13  
14 TWENTY-THIRD DEFENSE

15 (Justified and Privileged Conduct)

16 23. The alleged causes of action are barred because the conduct of ITCAN and its  
17 predecessors was at all times justified and privileged, and did not result in any wrongful benefit  
18 or unjust enrichment to ITCAN or its predecessors.

19  
20 TWENTY-FOURTH DEFENSE

21 (Lawful Business Means and Objectives)

22 24. The alleged causes of action are barred because ITCAN and its predecessors  
23 employed lawful, proper and justified means to accomplish legitimate business objectives.

1  
2 TWENTY-FIFTH DEFENSE

3 (Reasonable and Good Faith Conduct)

4 25. The alleged causes of action are barred because ITCAN and its predecessors acted  
5 reasonably and in good faith at all times material to the Complaint based on all relevant facts and  
6 circumstances known to it at the time ITCAN or its predecessors so acted.

7  
8 TWENTY-SIXTH DEFENSE

9 (Standard of Care)

10 26. ITCAN denies any negligence on its part and shows that, at all times relevant to  
11 Plaintiffs' Complaint, it and its predecessors met or exceeded the requisite standard of care.

12  
13 TWENTY-SEVENTH DEFENSE

14 (Acts or Omissions)

15 27. No act or omission on the part of ITCAN or its predecessors caused or contributed  
16 to Plaintiffs' alleged injuries and damages.

17  
18 TWENTY-EIGHTH DEFENSE

19 (No Duty)

20 28. ITCAN is informed, believes and thereon alleges that Plaintiffs' Complaint, and  
21 each cause of action therein, is barred because ITCAN and its predecessors did not owe any duty  
22 to Plaintiffs. To the extent that ITCAN or its predecessors owed any Plaintiffs a duty, including  
23 without limitation a duty of good faith, a duty of care or a fiduciary duty, ITCAN states that at all  
24 times relevant to Plaintiffs' Complaint, it or its predecessors met or exceeded such duty.

1  
2 TWENTY-NINTH DEFENSE

3 (No Production of Asbestos Products)

4 29. At no time did ITCAN, or its predecessors, engage in the business of  
5 manufacturing, fabricating, researching, designing, testing, marketing, offering for sale, selling,  
6 distributing, transporting, installing or otherwise producing asbestos or products containing  
7 asbestos.

8  
9 THIRTIETH DEFENSE

10 (Asbestos Production Occurred Pre-Acquisition)

11 30. The causes of action for alter ego liability are barred, in whole or in part, because  
12 Flintkote had ceased to engage in the business of manufacturing, fabricating, researching,  
13 designing, testing, marketing, offering for sale, selling, distributing, transporting, installing or  
14 otherwise producing asbestos or products containing asbestos prior to the point in time at which  
15 Flintkote became an indirect subsidiary of ITCAN or its predecessors.

16  
17 THIRTY-FIRST DEFENSE

18 (Due Process)

19 31. Plaintiff's claims violate the due process provisions of the United States  
20 Constitution and the correlative provisions of the California Constitution to the extent that they  
21 seek to deprive ITCAN of procedural and substantive safeguards, including traditional defenses  
22 to liability.

23  
24 THIRTY-SECOND DEFENSE

25 (Unmanageable and Inequitable Relief Requested)

26 32. The alleged causes of action are barred, in whole or part, because the relief  
27 requested by Plaintiffs is unmanageable and inequitable.

1  
2 THIRTY-THIRD DEFENSE

3 (Punitive Damages Unconstitutional)

4 33. The imposition of punitive or exemplary damages in the circumstances of this  
5 case would violate the Constitutions of the United States of America and the State of California.  
6

7 THIRTY-FOURTH DEFENSE

8 (Declaratory Relief Improper)

9 34. The Plaintiffs' prayer for declaratory relief is improper and should be barred  
10 because it seeks a declaration as to the rights and duties of parties over which the Bankruptcy  
11 Court adjudicating Flintkote's chapter 11 bankruptcy case has proper governing authority.  
12

13 THIRTY-FIFTH DEFENSE

14 (No Restitution or Disgorgement)

15 35. Plaintiffs are not entitled to restitution or disgorgement of profits.  
16

17 THIRTY-SIXTH DEFENSE

18 (Constitutions of Other Jurisdictions)

19 36. To the extent that the laws of other jurisdictions apply, ITCAN invokes each and  
20 every constitutional defense available to it under the constitutions (or similar charters) of each of  
21 the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico, the  
22 territories and possessions of the United States, as well as the constitutions (or similar charters)  
23 of Canada and each of its provinces. This specifically includes, but is not limited to, provisions  
24 relating to due process, access to the courts, freedom of speech, freedom of association, freedom  
25 to petition the government for redress of grievances, and limitations on compensatory damages.  
26  
27  
28



THIRTY-SEVENTH DEFENSE

(Statutes of Other Jurisdictions)

37. To the extent that the laws of other jurisdictions apply, ITCAN invokes each and every statutory and common law defense available to it under the laws of each of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Canada and each of its provinces, with respect to each of the claims alleged in the Complaint that is recognized in that jurisdiction.

THIRTY-EIGHTH DEFENSE

(Incorporation of Co-Defendants' Defenses)

38. ITCAN adopts and incorporates by reference any affirmative or additional defense asserted by any other Defendant to this action, to the extent such affirmative or additional defense applies to ITCAN.

THIRTY-NINTH DEFENSE

(Right to Assert Additional Defenses)

39. ITCAN hereby gives notice that it intends to rely on any other defense or defenses that may become available or apparent as a result of the development of additional information, through discovery in this action or otherwise, and hereby reserves the right to amend its answer and to assert any such defense.

FORTIETH DEFENSE

(Conforming Products)

40. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in the business of manufacturing or selling asbestos-containing products. Nonetheless, because it appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to

1 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
2 causes of action contained in the Complaint are barred to the extent the products referenced in  
3 this action and the methods of manufacture and testing conformed to the generally recognized  
4 and prevailing industry standards and the state of the art in existence at the time the design was  
5 prepared and the products manufactured and tested.

6  
7 FORTY-FIRST DEFENSE

8 (Conforming Products)

9 41. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
10 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
11 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
12 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
13 causes of action contained in the Complaint are barred to the extent the Hopkins' claims are  
14 based on Norman Hopkins, Jr.'s (the "Decedent") exposure to the products referenced in the  
15 Complaint, and said products at the time were manufactured in conformity with federal and state  
16 regulations, standards, specifications, and laws.

17  
18 FORTY-SECOND DEFENSE

19 (Government Contractor Defense)

20 42. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
21 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
22 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
23 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
24 causes of action contained in the Complaint are barred to the extent that any of the Hopkins'  
25 claims are based on Decedent's exposure to any products that were provided pursuant to a  
26 contract with the U.S. Government or otherwise provided under a contract whereby such  
27 products were to meet government or military specifications, the use by Decedent of these  
28

1 products, if any, was in accordance with the requirements of the designs, plans, and  
2 specifications of the governmental entities or agencies or others and in strict compliance  
3 therewith and with all required federal regulations and standards. ITCAN specifically pleads the  
4 government contractor defense.

5  
6 FORTY-THIRD DEFENSE

7 (Failure to Exercise Care)

8 43. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
9 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
10 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
11 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
12 causes of action contained in the Complaint are barred to the extent that Decedent failed to  
13 exercise ordinary care for his own safety. That failure is a partial or a complete bar to all claims  
14 asserted by the Hopkins in the Complaint.

15  
16 FORTY-FOURTH DEFENSE

17 (Contributory Negligence)

18 44. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
19 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
20 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
21 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
22 causes of action contained in the Complaint are barred to the extent that some or all of the  
23 Hopkins' alleged injuries, damages or losses, if any, were proximately caused, or contributed to,  
24 by the negligence of Decedent or fellow servants over which Flintkote (or ITCAN or its  
25 predecessors) had no control, thereby precluding recovery against it.

1  
2  
3 FORTY-FIFTH DEFENSE

4 (Contributory Negligence)

5 45. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
6 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
7 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
8 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
9 causes of action contained in the Complaint are barred to the extent that negligence and conduct  
10 of Decedent's employers is a partial or a complete bar to all claims asserted in by the Hopkins in  
11 the Complaint.

12  
13 FORTY-SIXTH DEFENSE

14 (Non-Defendant Products)

15 46. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
16 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
17 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
18 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
19 causes of action contained in the Complaint are barred to the extent that Decedent's death was or  
20 may have been due to exposure to products of distributors, suppliers, and manufacturers not  
21 named as defendants in this action.

22  
23 FORTY-SEVENTH DEFENSE

24 (Learned Intermediary and Sophisticated User)

25 47. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
26 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
27 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
28

1 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
2 causes of action contained in the Complaint are barred by the learned intermediary and  
3 sophisticated user doctrines.

4  
5 FORTY-EIGHTH DEFENSE

6 (Assumption of Risk)

7 48. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
8 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
9 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
10 contest allegations of asbestos personal injury, ITCAN denies that the Hopkins incurred any  
11 injuries or damages as a result of any actions or omissions of Flintkote (or ITCAN or its  
12 predecessors). Nevertheless, as to any injuries or damages alleged to have been incurred,  
13 Decedent voluntarily and knowingly assumed the risk of incurring same and, therefore, the  
14 Hopkins are not entitled to recover against ITCAN.

15  
16 FORTY-NINTH DEFENSE

17 (Misuse of Product)

18 49. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in  
19 the business of manufacturing or selling asbestos-containing products. Nonetheless, because it  
20 appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to  
21 contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins'  
22 causes of action contained in the Complaint are barred to the extent that the injuries alleged by  
23 the Hopkins resulted solely and proximately from a misuse or an abnormal and unforeseeable use  
24 of the products in question by third persons over whom Flintkote (or ITCAN or its predecessors)  
25 had no control.

FIFTIETH DEFENSE

(Unrelated Cause of Death)

50. As set forth in paragraph 29, ITCAN, and its predecessors, did not participate in the business of manufacturing or selling asbestos-containing products. Nonetheless, because it appears that no other defendant named in Plaintiffs' Complaint may be able or motivated to contest allegations of asbestos personal injury, ITCAN asserts that some or all of the Hopkins' causes of action contained in the Complaint are barred to the extent that the Decedent's death was based solely, or in substantial part, to disease and other causes that were not related or connected with any product sold, distributed or manufactured by Flintkote (or ITCAN or its predecessors).

FIFTY-FIRST DEFENSE

(Setoff and Recoupment)


51. The Plaintiffs' claims are subject to ITCAN's rights of setoff and/or recoupment.

WHEREFORE, ITCAN prays judgment as follows:

1. That Plaintiffs take nothing by reason of the Complaint;
2. That judgment be entered in favor of ITCAN and against Plaintiffs;
3. That the Complaint be dismissed with prejudice;
4. That ITCAN be awarded its costs of suit, including reasonable attorneys' fees; and
5. For such other relief as this Court deems just and proper.

1  
2  
3 May 4, 2006

4 QUINN EMANUEL URQUHART  
5 OLIVER & HEDGES, LLP

6 By   
7 Loren Kieve

8 Counsel for Defendant  
9 Imperial Tobacco Canada Limited

**PROOF OF SERVICE**

I am employed in the County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 50 California Street, 22nd Floor, San Francisco, California 94111.

On May 4, 2006, I served true copies of the following document(s) described as:

**DEFENDANT IMPERIAL TOBACCO CANADA LIMITED'S ANSWER TO FIRST AMENDED COMPLAINT FOR DAMAGES AND RELIEF AGAINST ALTER EGO, FOR RECOVERY OF DIVIDENDS, FOR RECOVERY OF FRAUDULENT TRANSFERS, FOR DAMAGES BY REASON OF BREACH OF FIDUCIARY DUTY, FOR DAMAGES FOR BREACH OF DUTY AND NEGLIGENCE, TO ENFORCE CONSTRUCTIVE TRUST, FOR RESTITUTION, AND FOR DECLARATORY RELIEF**

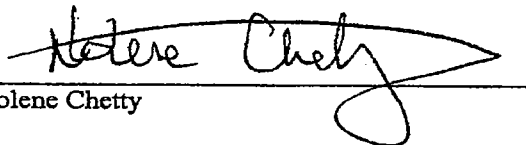
on the parties in this action as follows:

**SEE ATTACHED LIST**

**BY EXPRESS MAIL:** I deposited such document(s) in a box or other facility regularly maintained by the United States Postal Service, in sealed envelope(s) or package(s) designated by the United States Postal Service with delivery fees paid or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 4, 2006, at San Francisco, California.

  
Nolene Chetty



**SERVICE LIST**

Alan R. Brayton  
Gilbert Purcell  
David Donadio  
Brayton Purcell LLP  
222 Rush Landing Road  
Novato, CA 94948-6169

Stephen Snyder  
James Miller  
Snyder Miller & Orton LLP  
111 Sutter Street, Suite 1950  
San Francisco, CA 94104

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I.(a) PLAINTIFFS

See Attached Sheet

## DEFENDANTS

See Attached Sheet

(b) County Of Residence Of First Listed Plaintiff \_\_\_\_\_

(EXCEPT IN U.S. PLAINTIFF CASES)

County Of Residence Of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorneys (Firm Name, Address And Telephone Number)

Attorneys (If Known)

See Attached Sheet-

See Attached Sheet

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place An "X" In One Box For Plaintiff And One Box For Defendant)			
		PTF DEF		PTF DEF	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Property Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 445 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ref Inc Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from State Court☐ 4 Reinstated or Reopened☒ 5 Transferred from another district (specify) N.D. Cal.☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite The U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §157(b)(5)

Brief description of cause: Seeks transfer of action originally filed in California state court

## VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

5/5/06

SIGNATURE OF ATTORNEY OF RECORD

*Brett D. Fallon*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**Plaintiffs**

The Flintkote Company, Michael Hopkins, Michelle Hopkins, Marlene Hopkins, James McMonagle, as legal representative for future asbestos personal injury claimants and The Official Committee of Asbestos Personal Injury Claimants.

**Attorneys**

Alan R. Brayton  
Gilbert R. Purcell  
Brayton Purcell LLP  
222 Rush Landing Road  
Post Office Box 6169  
Novato, CA 94948  
Attorneys for Marlene Hopkins, Michele Hopkins and Michael Hopkins

Stephen M. Snyder  
Snyder, Miller & Orton LLP  
111 Sutter Street, Suite 1950  
San Francisco, CA 94104  
Attorneys for The Flintkote Company, The Official Committee of Asbestos Personal Injury Claimants and James J. McMonagle as the Legal Representative for Future Asbestos Personal Injury Claimants

Eliot S. Jubelirer  
Jean L. Bertrand  
Morgenstern & Jubelirer  
One Market Street  
Spear Street Tower, 32<sup>nd</sup> Floor  
San Francisco, CA 94105  
Additional Counsel for The Flintkote Company, the Official Committee of Asbestos Personal Injury Claimants and James J. McMonagle, as the Legal Representative for Future Asbestos Personal Injury Claimants

Alan Pedlar  
The Law Office of Alan Pedlar  
1112 Via Malibu  
Aptos, CA 95083  
Additional counsel for The Flintkote Company, the Official Committee of Asbestos Personal Injury Claimants and James J. McMonagle, as the Legal Representative for Future Asbestos Personal Injury Claimants

Kelly C. Wooster  
112 Rock Creek Court  
Post Office Box 62  
Copperopolis, CA 95228  
Additional Counsel for The Flintkote Company, the Official Committee of Asbestos  
Personal Injury Claimants and James J. McMonagle, as the Legal Representative for  
Future Asbestos Personal Injury Claimants

Kevin T. Lantry  
Jeffrey E. Bjork  
Sidley Austin LLP  
555 West Fifth Street  
Los Angeles, CA 90013  
Attorneys for The Flintkote Company

Laura Davis Jones  
James E. O'Neill, III  
Pachulski Stang Ziehl Young Jones & Weintraub LLP  
919 North Market Street, 17<sup>th</sup> Floor  
Post Office Box 8705  
Wilmington, DE 19899-8705  
Attorneys for The Flintkote Company

Marla R. Eskin  
Campbell & Levine, LLC  
800 North King Street, Suite 300  
Wilmington, DE 19801  
Attorneys for Official Committee of Asbestos Personal Injury Claimants

James L. Patton, Jr.  
Young, Conaway, Stargatt & Taylor LLP  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801  
Attorneys for James J. McMonagle as the Legal Representative for Future Asbestos  
Personal Injury Claimants

**Defendants**

Plant Insulation Company, Uniroyal Holding, Inc., Imperial Tobacco Canada Limited,  
Sullivan & Cromwell LLP

**Attorneys**

Stephen M. Miller  
Brett D. Fallon  
Morris, James, Hitchens & Williams LLP  
222 Delaware Avenue, 10<sup>th</sup> Floor  
Post Office Box 2306  
Wilmington, DE 19899  
Attorneys for Imperial Tobacco Canada Limited

L. Joseph Loveland  
James A. Pardo, Jr.  
Mark M. Maloney  
King & Spalding  
1180 Peach Street, N. E.  
Atlanta, GA 30309  
Attorneys for Imperial Tobacco Canada Limited

Gregory D. Phillips  
Rohit K. Single  
Brad D. Brian  
Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attorneys for Sullivan & Cromwell

Monte S. Travis  
Travis & Pon  
2001 Fillmore Street  
San Francisco, CA 94115-2708  
Attorneys for Plant Insulation

Nancy E. Hudgins  
565 Commercial Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111  
Attorneys for Uniroyal Holdings, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MARLENE HOPKINS, Individually, as )  
Wrongful Death Heir, and as Successor-in- )  
Interest to NORMAN HOPKINS, JR., )  
Deceased; and MICHELLE HOPKINS, and )  
MICHAEL HOPKINS, as Legal Heirs of )  
NORMAN HOPKINS, Deceased, THE )  
FLINTKOTE COMPANY, THE OFFICIAL )  
COMMITTEE OF THE ASBESTOS )  
PERSONAL INJURY CLAIMANTS, and )  
JAMES J. MCMONAGLE as the LEGAL )  
REPRESENTATIVE FOR FUTURE )  
ASBESTOS PERSONAL INJURY )  
CLAIMANTS )

Plaintiffs,

vs.

PLANT INSULATION COMPANY; )  
UNIROYAL HOLDING, INC.; IMPERIAL )  
TOBACCO CANADA LIMITED; )  
SULLIVAN & CROMWELL LLP; and )  
DOES 1 through 100, )

Defendants.

Civil Action No. \_\_\_\_\_

**AFFIDAVIT OF REBECCA WORKMAN, PARALEGAL**

STATE OF DELAWARE :  
 : SS:  
NEW CASTLE COUNTY :

I, Rebecca Workman, certify that I am, and at all times during the service, have been an employee of Morris, James, Hitchens & Williams LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on May 5, 2006, I caused to be served:

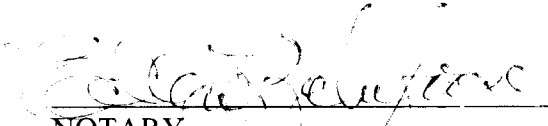
**EMERGENCY PETITION OF IMPERIAL TOBACCO CANADA LIMITED FOR AN  
ORDER OF TRANSFER PURSUANT TO 28 U.S.C. § 157(B)(5)**

Service was completed upon parties on the attached list in the manner indicated thereon.

Date: May 5, 2006.

  
Rebecca Workman

SWORN AND SUBSCRIBED before me this 5<sup>th</sup> day of May, 2006.

  
NOTARY

Notary Public - State of Delaware  
My Comm. Expires Feb. 21, 2007

**VIA FIRST CLASS MAIL**

Gilbert L. Purcell, Esquire  
Brayton Purcell, LLP  
222 Rush Landing Road  
Novato, CA 94948-6169  
(Attorneys for Plaintiff Marlene  
Hopkins, Michelle Hopkins, and  
Michael Hopkins)

Stephen M. Snyder, Esquire  
Snyder Miller & Orton LLP  
111 Sutter Street, Suite 1950  
San Francisco, CA 94104  
(Attorneys for Plaintiffs The  
Flintkote Company, The  
Official Committee of Asbestos  
Personal Injury Claimants, and  
James J. McMonagle as the  
Legal Representative for Future  
Asbestos Personal Injury Claimants)

Eliot S. Jubelirer, Esquire  
Jean L. Bertrand, Esquire  
Morgenstein & Jubelirer  
One Market, Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105  
(Additional Counsel for Plaintiffs)

Alan Pedlar, Esquire  
The Law Office of Alan Pedlar  
1112 Via Malibu  
Aptos, CA 95083  
(Additional Counsel for Plaintiffs)

Kelly C. Wooster, Esquire  
112 Rock Creek Court  
P.O. Box 62  
Copperopolis, CA 95228  
(Additional Counsel for Plaintiffs)

**VIA FIRST CLASS MAIL**

Kevin T. Lantry  
Jeffrey E. Bjork  
Sidley Austin LLP  
555 West Fifth Street  
Los Angeles, CA 90013  
Attorneys for The Flintkote Company

Gregory D. Phillips  
Rohit K. Single  
Brad D. Brian  
Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attorneys for Sullivan & Cromwell

Monte S. Travis  
Travis & Pon  
2001 Fillmore Street  
San Francisco, CA 94115-2708  
Attorneys for Plant Insulation

Nancy E. Hudgins  
565 Commercial Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111  
Attorneys for Uniroyal Holdings, Inc.

**VIA HAND DELIVERY**

Laura Davis Jones  
James E. O'Neill, III  
Pachulski Stang Ziehl Young Jones &  
Weintraub LLP  
919 North Market Street, 17<sup>th</sup> Floor  
Post Office Box 8705  
Wilmington, DE 19899-8705  
Attorneys for The Flintkote Company



**VIA HAND DELIVERY**

Marla Eskin, Esquire  
Kathleen Campbell, Esquire  
Campbell & Levine, LLC  
800 N. King Street, Suite 300  
Wilmington, DE 19801  
(Counsel for the Official Committee of  
Creditors)

James L. Patton, Jr., Esquire  
Edwin J. Harron, Esquire  
Young Conaway Stargatt & Taylor LLP  
1000 West Street, 17<sup>th</sup> Floor  
P.O. Box 391  
Wilmington, DE 19899-0391  
(Counsel to Legal Representative)